FIRST REPORT
OF THE ATTORNEY GENERAL
OF THE UNITED STATES

PHILADELPHIA, 1791

CHILDS AND SWAINE

REPORT

OF THE

ATTORNEY-GENERAL.

READ IN THE

HOUSE OF REPRESENTATIVES,

DECEMBER 31, 1790.

PHILADELPHIA, *December* 27, 1790.

SIR,

THE Order of the Houſe of Repreſentatives, requiring me to report on the JUDICIARY SYSTEM *of the United States, has preſcribed a taſk of no common difficulty.*

I doubt whether any one man could anſwer for the accuracy of ſuch a work; and even for more than one, a greater portion of time would be neceſſary, to inſure preciſion, than the interval between the laſt and preſent ſeſſion.

But theſe are not my only embarraſſments. I am called upon to reviſe a plan approved by legiſlative wiſdom; and although I have examined it with a deference moſt reſpectful and ſincere, yet have I been compelled to queſtion the fitneſs of ſome of its leading features.

I ſubmit, therefore, to the candor and indulgence of the Houſe, the encloſed Report. The firſt part contains an enumeration of what I conceive to be the principal defects. Thoſe of the ſmaller kind would have been treated in the ſame form, but for the opportunity, which a bill affords, to avoid too much minuteneſs of comment, and to expreſs my ideas more definitely.

A bill is prepared in the ſecond part, in which a large ſhare of the former matter is preſerved. But the language and arrangement of the judicial law have not been implicitly purſued; it being almoſt impracticable to incorporate the propoſed amendments by referrences to pages and lines. Where the changes or additions are eſſential, I have endeavored to juſtify them by explanatory remarks.

After all, however, I am perſuaded that time and practice can alone mature the judicial ſyſtem. If in this attempt to put it into the train of improvement, I have maintained errors in doctrine, it is a conſolation to me to reflect, that my opinions have nothing of authority in them.

I have the honor, Sir, to be,
With the higheſt reſpect,
Your moſt obedient ſervant,

Edmund Randolph.

The SPEAKER of the Houſe of Repreſentatives.

REPORT

OF THE

ATTORNEY-GENERAL

TO THE

HOUSE OF REPRESENTATIVES.

THE ATTORNEY-GENERAL, *to whom were referred by the Order of the* HOUSE *of* REPRESENTATIVES, "*ſuch Matters relative to the Adminiſtration of Juſtice under the Authority of the* UNITED STATES, *as may require "to be remedied, and ſuch Proviſions in the reſpective Caſes, as he ſhould deem "adviſable,*" *in obedience thereto makes the following*

REPORT.

I. THE firſt object of this duty is to ſuggeſt any defects exiſting in the judiciary ſyſtem.

The Courts of the United States demand an organization, of which we have no appoſite example in the hiſtory of foreign juriſprudence; and our own ſcheme has not received the full light of experience. The following obſervations muſt therefore depend for their chief ſupport, on reaſoning, unaccompanied by precedent.

From which of the judicial powers enumerated in the Conſtitution, the ſtate courts may be rightfully excluded, is an enquiry, to which an early part of the judiciary law gives birth. I. Excluſion of ſtate courts.

The aggregate of theſe powers relate—

1. To caſes ariſing in law or equity under the Conſtitution.
2. Under the laws of the United States.
3. Under treaties made, or to be made, by their authority.
4. To caſes affecting ambaſſadors, other public miniſters, and conſuls.
5. To caſes of admiralty and maritime juriſdiction.
6. To controverſies to which the United States ſhall be a party.
7. To controverſies between a ſtate and citizens of another ſtate.
8. To controverſies between citizens of different ſtates.
9. To controverſies between citizens of the ſame ſtate, claiming lands under grants of different ſtates: And,
10. To controverſies between a ſtate or the citizens thereof, and foreign ſtates, citizens or ſubjects.

Of theſe ten claſſes of juriſdiction, ſome are veſted in the federal, concurrently with the ſtate tribunals; others in the federal, excluſively of the ſtate tribunals.

It is not *expreſsly* forbidden to the ſtates to aſſume the cognizance of any one or all of them. For the judicial power of the United States is only to *extend* to the recited caſes: And to *extend* the authority of one court to a deſcription of perſons or things, which ſhould of courſe be embraced by another, had no ſuch extenſion been made, cannot of itſelf deprive that other of its pre-exiſting rights.

The *nature* however, of ſome of theſe ſubjects, ſhuts out the juriſdiction of the ſtate courts, as ſuch, on the vital principles of the Union.

1. The firſt among theſe are caſes of admiralty and maritime juriſdiction; terms, which, when thus applied, are nearly ſynonimous. They bear a technical meaning, well known throughout the United States, and uniform; being expreſſive of courts, copied from the ſame original. It belongs to them to decide all cauſes, ariſing wholly on the ſea, and not within the precincts of any county, and to condemn all lawful prizes, in time of war.

(*a*) The open ſea is a great high-way to all mankind, who have not ſurrendered by an acquieſcence or a poſitive act, the privilege of navigating particular parts of it. In general, every nation ranks the cognizance of cauſes, wholly ariſing there, among the attributes of independence; and to none is it denied, where the litigants, or the litigated property is within its territory. If therefore it were ſuppoſed, that any one of the now United States had never entered into the Union, to it would this prerogative have appertained. But being a party to the federal compact, each ſtate has reſigned it to the federal government. It has been thus reſigned;

1. Becauſe that government only, as poſſeſſing the rights of remonſtrance, marque, repriſal and war, can protect the citizens of the United States from hoſtilities, in their daily intercourſe with rival adventurers on that element.

2. Becauſe a concurrence of juriſdiction might either involve the confederacy in war, contrary to its will, or ſubject it to a grievous reparation of ſome injury.

3. Becauſe the power given to Congreſs by the Conſtitution, to define and puniſh piracies and felonies on the high ſeas, and offences againſt the law of nations, comprehends the whole of criminal ſea law, and warrants that body to aſſign to the federal courts alone an excluſive juriſdiction therein: And,

Laſtly. 4. Becauſe under the foregoing powers, and the power of Congreſs to regulate commerce, and to make rules concerning captures on water, the pure marine law, properly ſo called, can be diſpenſed by thoſe courts only which derive an authority over it from the United States.

(*b*) For the ſame reaſon is the cognizance of prizes in time of war lodged in the federal courts excluſively. But it is not pretended from hence that the United States are abſolved from the obligation of neutrality.

(*c*) Two other denominations of caſes have been added to the admiralty and maritime courts; to wit—offences on water againſt the revenue laws, and claims for ſpecific ſatisfaction on the body of a veſſel, as for mariners' wages, &c. But neither of theſe is of neceſſity appropriated to the admiralty. It is true that a juriſdiction over the former muſt be deduced from Congreſs, and that they will doubtleſs depoſit it in their own tribunals; and moſt probably in the admiralty. In the latter, the ſtate legiſlatures may eſtabliſh a juriſdiction reaching the veſſel itſelf.

2. If the United States, as far as they can be a party defendant, ſhould happen to be ſo, their own courts can alone judge them. To drag a confederate before the courts of one of its members, would reverſe the plain dictates of order; hazard the moſt critical intereſts of the union upon the pleaſure of a ſingle ſtate; and enable every individual ſtate under the pretext of a forenſic ſentence, to arrogate the general ſovereignty.

3. In like manner, as far as a particular ſtate can be a party defendant, a ſiſter ſtate cannot be her judge. Were the ſtates of America unconfederated,

they would be as free from mutual controul as other disjointed nations. Nor does the federal compact narrow this exemption; but confirms it, by eſtabliſhing a common arbiter in the federal judiciary, whoſe conſtitutional authority may adminiſter redreſs.

It deſerves however to be remarked in this place, that theſe ideas are not inconſiſtent with the right of the ſtates ſeparately, or of the United States collectively, to reſort to the ſtate courts as *plaintiffs*; nor yet with the right of the ſtates ſeparately to open their own courts for ſuits againſt themſelves.

4. In diſputes ariſing upon the grants of land by different ſtates, the conteſt muſt turn upon one of two queſtions; in which ſtate the land lies; or whether lands, confeſſedly within one ſtate, may not, by virtue of ſome act, be claimed by the grantee of another. It would be the extreme of preſumption for a ſiſter ſtate to affect a juriſdiction in this caſe: and more eſpecially ought the granting and claiming ſtates to keep aloof from the deciſion, it being the cauſe of both.

5. If crimes and offences be puniſhable by that authority alone, againſt which they are committed; thoſe created by the Conſtitution, or by Congreſs, reſult to the federal judiciary only. If on the other hand it were allowed, that Congreſs might transfer the cognizance of theſe caſes to the ſtate courts, until that transfer it cannot be theirs.

6. Rights too created by Congreſs, may have a ſpecial remedy given to them in the federal courts; and to them ought therefore to be reſtricted.

We are then led to conclude, that the judiciary of the United States have excluſive juriſdiction in the following caſes.

1. In thoſe of ſtrict admiralty and maritime juriſdiction.
2. Where the United States are a party defendant.
3. Where a particular ſtate is a party defendant.
4. Where lands are claimed under grants of different ſtates.
5. In treaſon, as deſcribed by the conſtitution, and other crimes and offences created by the laws of the United States, but not conſigned to the ſtate tribunals.
6. In rights created by a law of the United States, and having a ſpecial remedy given to them in the federal courts.

In all the other caſes, to which the judicial power of the United States *extends*, a concurrent juriſdiction is preſumed; provided they be not mingled with others coming within any of the ſix foregoing deſcriptions. By this ſtandard, which, if found, may by its adoption maintain the harmony of the federal and ſtate judiciaries, the Attorney-General has tried the juriſdictions, marked out by law. But with a reluctance and diſtruſt of his own judgment, which nothing leſs than a ſenſe of duty could overcome, he begs leave to aſk,

1. How far the ſtate courts ought to be prohibited, as they now are from a juriſdiction in ſuits againſt conſuls or vice-conſuls, as ſuch, or againſt a ſtate, ſued with its own permiſſion, in its own courts, or in ſuits where a ſtate is plaintiff? And, Sec. 9. 13.

2. Whether the reſtrictions on the ſtate courts ought not to be increaſed, ſo as to bind all the ſix caſes above mentioned?

II. Re-examination of ſtate decrees. Sec. 25.

On a farther proſecution of the caſes acknowledged to be of concurrent juriſdiction, it appears, that a writ of error may iſſue from the ſupreme court of the United States to a final judgment or decree rendered in any ſuit by the higheſt ſtate court of law or equity, in the nine following caſes:

Where is drawn in queſtion,

1. The validity of a treaty of the United States;
2. Or of a ſtatute of the United States;
3. Or of an authority exerciſed under the United States:

} and the deciſion is againſt their validity.

Or where is drawn in queſtion,

1. The validity of a ſtatute of any ſtate on the ground of being repugnant to the Conſtitution, treaties, or laws of the United States ;
2. Or of an authority exerciſed under any ſtate upon like grounds :

} and the deciſion is in favor of ſuch their validity.

Or where is drawn in queſtion,

1. The conſtruction of any clauſe of the Conſtitution of the United States ;
2. Or of a treaty of the United States ;
3. Or of a ſtatute of the United States ;
4. Or of a commiſſion held under the United States :

} and the deciſion is againſt the title, right, privilege or exemption, ſpecially ſet up, or claimed by either party under ſuch clauſe of the ſaid Conſtitution, treaty, ſtatute, or commiſſion.

That the avenue to the federal courts ought, in theſe inſtances, to be unobſtructed is manifeſt. But in what ſtage, and by what form ſhall their interpoſition be prayed ? There are perhaps but two modes ; one of which is to convert the ſupreme court of the United States into an appellate tribunal over the ſupreme courts of the ſeveral ſtates ; the other to permit a removal by certiorari before trial.

The Attorney-General will not decide how far the arguments of thoſe, who do not aſſent to the firſt, merit attention. But he is conſtrained to lay them before the Houſe.

It has been conceded, that when the Conſtitution delegates to the ſupreme court "*appellate juriſdiction*," it uſes a very broad expreſſion ; which, if underſtood in its literal latitude, tolerates the firſt expedient. But on the other hand it has been aſſerted,

1. That this phraſe muſt be preſſed cloſe to the matter of the third article of the Conſtitution, which is the *judicial power of the United States*, without blending ſtate courts.

2. That this ſpecies of conſtruction is not unfrequent ; nay, in another part of the article it is drawn into action. For without it, the direction, that all crimes, except in caſes of impeachment, ſhall be tried by a jury, might intrude farther into the police of a ſtate, than has been ever yet contended.

3. That as the ſtate courts did not rely for their concurrent juriſdiction upon any ceſſion in the Conſtitution, the ſpecial proviſion, that the ſupreme court ſhould have *original* juriſdiction in four caſes, was deſigned to prevent the inferior courts of the United States from having the ſole original juriſdiction in thoſe caſes : and that *original* and *appellate* being correlative in their ſignification, the latter muſt alſo beſpeak ſome relation between the ſupreme and inferior courts of the United States alone.

4. That in caſes of admiralty and maritime juriſdicton, and ſome others, with which a ſtate cannot intermeddle, the appellate juriſdiction muſt operate on the decrees of the inferior federal courts only : and that the interpretation of one paſſage in the article, being thus far clear, furniſhes a key by which to expound the others : And,

5. That a concurrence of juriſdiction ſo ſtrongly implies coequality, that nothing ought to arraign it, except a very explicit declaration, or at leaſt a violent neceſſity to the contrary.

But let theſe arguments be paſſed over without further notice.

Does juſtice intitle the plaintiff to the firſt mode ? When he inſtitutes his ſuit, he has the choice of the ſtate and federal courts. He elects the former, and to that election he ought to adhere.

Does juſtice intitle a defendant to it ? Certainly not ; ſhould he be free to withdraw the cauſe by a certiorari at any time before trial, from the ſtate court. For if with this privilege he proceeds without a murmur through the

whole length of the ſtate courts, ought he to catch a new chance from the federal courts? Have not both plaintiff and defendant thus acquieſcing, virtually choſen their own judges?

Again. Let ſuppoſition itſelf be tortured: let the higheſt ſtate courts, although ſworn to ſupport the Conſtitution, invalidate a treaty, a ſtatute or an authority of the United States.

1. Such a decree could not invalidate them, nor impair the right of the loweſt federal court to ratify them.

2. It would not diſturb the tranquility of the United States. For if even aliens were the parties, the remonſtrances of their prince might be repelled by ſhewing that they favored the ſtate juriſdiction, by waiving the privilege of going into the federal courts.

3. Nor yet would the honor of the United States be ſullied. For if it has not occurred, it may be conceived, that courts, whoſe juriſdiction is ſtraitened in value, but whoſe decrees up to that value are final, may be refractory againſt a law, without diminiſhing the real dignity of government. Judicial uniformity is ſurely a public good, but its price may be too great if it can be purchaſed only by cheriſhing a power, which to ſay no more, cannot be inconteſtibly proved.

4. At any rate, unleſs a party ſhall forſake the ordinary maxims of prudence, the hoſtility of the ſupreme ſtate courts (if hoſtility be poſſible) will be diſplayed but once. For the remembrance of an adverſe deciſion or an adverſe temper in thoſe courts, will inevitably proclaim the federal courts as the aſylum to federal intereſts.

From theſe conſiderations, the ſecond mode by certiorari is perhaps eligible. But it may be ſaid, that even this proceſs argues ſomething more than a concurrence of juriſdiction in the federal courts; and that if it be improper to tie a defendant to a ſtate court againſt his will, it is equally ſo to force a plaintiff to a federal court againſt *his* will. To this let it be anſwered,

1. That the judicial power of the United States was eſtabliſhed to prevent ſuitors in certain caſes from being obliged to ſubmit entirely to the ſtate courts; and that a material objection to the re-examination of a final decree, is founded upon both parties, voluntarily and cheerfully devoting themſelves to the ſtate courts: And

2. That a concurrent juriſdiction would be a heavy oppreſſion to a defendant, if he cannot depart from a ſtate court, while the plaintiff may arreſt him by a ſtate or federal writ.

III. Judges of the ſupreme court made judges of the circuit courts.

A third alteration, which the Attorney-General cannot forbear to ſuggeſt, is, that the judges of the ſupreme court ſhall ceaſe to be judges of the circuit courts.

It is obvious that the inferior *courts* ought to be diſtinct bodies from the ſupreme *courts*. But how far it may confound theſe two ſpecies of courts, to ſuffer the judges of the ſupreme to hold ſeats on the circuit bench, he declines the diſcuſſion, and circumſcribes his reflections within the pale of expediency only.

1. Thoſe who pronounce the law of the land without appeal, ought to be pre-eminent in moſt endowments of the mind. Survey the functions of a judge of the ſupreme court. He muſt be a maſter of the common law in all its diviſions, a chancellor, a civilian, a federal juriſt, and ſkilled in the laws of each ſtate. To expect that in future times this aſſemblage of talents will be ready, without farther ſtudy, for the national ſervice, is to confide too largely in the public fortune. Moſt vacancies on the bench will be ſupplied by profeſſional men, who perhaps have been too much animated by the contentions of the bar, deliberately to explore this extenſive range of ſcience. In a great mea-

ſure then, the ſupreme judges will form themſelves after their nomination. But what leiſure remains from their itinerant diſpenſation of juſtice? Sum up all the fragments of their time, hold their fatigue at naught, and let them bid adieu to all domeſtic concerns, ſtill the average term of a life, already advanced, will be too ſhort for any important proficiency.

2. The detaching of the judges to different circuits, defeats the benefit of an unprejudiced conſultation. The delivery of a ſolemn opinion in court, commits them; and ſhould a judgment rendered by two, be erroneous, will they meet their four brethren unbiaſſed? May not human nature, thus trammelled, ſtruggle too long againſt conviction? And how few would erect a monument to their candor, at the expenſe of their reputation for firmneſs and diſcernment?

3. Jealouſy among the members of a court is always an evil; and its malignity would be double, ſhould it creep into the ſupreme court, obſcure the diſcovery of right, and weaken that reſpect which the public welfare ſeeks for their decrees. But this cannot be affirmed to be beyond the compaſs of events to men agitated by the conſtant ſcanning of the judicial conduct of each other.

If this ſhould not happen, there is freſh danger on the other ſide; leſt they ſhould be reſtrained by delicacy and mutual tenderneſs, from probing without ſcruple, what had been done in the circuit courts. A ſchiſm of ſentiment before a deciſion and after a free conference, is not eſteemed harſh; but it is very painful to undertake to ſatisfy another, that in a public opinion already uttered, he has been in the wrong.

4. Situated as the United States are, many of the moſt weighty judiciary queſtions will be perfectly novel. Theſe muſt be hurried off on the circuits, where neceſſary books are not to be had; or relinquiſhed for argument before the next ſet of judges, who on their part may want books, and a calmer ſeaſon for thought. So that a cauſe may be ſuſpended until every judge ſhall have heard it.

5. To this ſeparation of the ſupreme judges from the circuit ſervice, ſome objections may be anticipated.

It may be urged,

1. That it will tend to impreſs the citizens of the United States favorably towards the general government, ſhould the moſt diſtinguiſhed judges viſit every ſtate: And,

2. That in one county, aſſizes are held with applauſe, by the very men who afterwards ſit collectively, to review what may have been there tranſacted, and who are alſo conſulted in the dernier reſort.

1. The firſt objection is too vague. In its extent, it impugns all ſubordinate departments whatever; and ought therefore to be regarded no otherwiſe, than as it may be unoppoſed by inconveniencies. Let it then be inquired, if none of the preceding do oppoſe.

Again: Will not the judges of the circuit courts be adequate to their ſtations?

The ſupreme judges themſelves who ride the circuits, will (if indeed ſuch a circumſtance can be of much avail) be ſoon graduated in the public mind, in relation to the circuits; will ſoon be conſidered as circuit judges, and will not be often appreciated as ſupreme judges. When a diſcomfited party looks up to the higheſt tribunal for redreſs, he is told by the report of the world that in it every quality is centered neceſſary to juſtice. But how would his ſanguine hopes be fruſtrated, if among ſix judges, two are moſt probably to repeat their former ſuffrages, or to vindicate them with ſtrenuous ability; or if to avoid this, the wiſdom of a third of the number muſt be laid aſide?

2. The aſſize ſcheme will not be confronted by any impeachment of its merit; on the contrary, its merit is admitted, although perhaps it cannot ſafely be

the ground work of our reaſoning on the judiciary of the United States, until we are aſſured that we have penetrated all the arcana of its operations. But there is a court of final juriſdiction, which by being ready to correct, inceſſantly admoniſhes all the ſubordinate courts to be circumſpect. Equity itſelf too, being in different hands from the common law, is watchful over every departure from what is right.

When the judges of aſſize aſſiſt with their counſels in the laſt reſort, they are not authoritative. Such of them as are members of the body, are ſo ſmall in number, as to be compelled to rely on the ſtrength and ſolidity of their judgments only, inſtead of their influence. Beſides, the judges are inrolled in diſtinct corps; and this alone would be a kind of hoſtage for exertions in behalf of truth.

Where then is the ſimilitude to the ſupreme court of the United States?

IV. Reports.

Should the judges of the ſupreme court become ſtationary, they will be able to execute reports of their own deciſions, and thus promote uniformity through the whole judiciary of the United States.

Reports may be traced up to a venerable antiquity. In England they were compoſed for centuries by prothonotaries of the court, at the charges of the crown: And ever ſince the patronage of government has retired, their utility has been univerſally avowed. In our own country too, labors like theſe have diffuſed a knowledge of the laws of particular ſtates. And how valuable in point of authenticity and inſtruction, muſt reports be, from the ſupreme court?

But theſe are not the only advantages:

They announce the talents of the judges.

If the judge, whoſe reputation has raiſed him to office, ſhall be in the habit of delivering feeble opinions, theſe reports will firſt excite ſurpriſe, and afterwards a ſuſpicion, which will terminate in a vigilance over his actions.

In a word, when by means of theſe reports, the ſenſe of the ſupreme court ſhall be aſcertained and followed in the inferior tribunals, much time and money will be ſaved to diſſatisfied ſuitors, who might otherwiſe appeal.

V. Proceedings of equity and admiralty according to the civil law.

A diverſity of opinion has prevailed on the forms and modes, to be obſerved in cauſes of equity and of admiralty and maritime juriſdiction: Whether they are to be according to the mere civil law, unqualified by the uſages of any modern nation, or under limitations?

If the untempered ſeverity of the Roman law is to predominate, the rights of property, and of perſonal liberty, are in jeopardy: Without exhibiting a tedious liſt of what are termed the ſubſtantial and accidental parts of a civil cauſe, let a few of the moſt obnoxious forms of the civil law be ſelected.

1. In ſcarcely any caſe, unleſs in that of a ne-exeat, is an arreſt upon citation or ſubpœna, at the firſt inſtitution of a chancery ſuit known in the United States. In the civil law it is otherwiſe.

2. One mode of executing a ſentence is by putting the plaintiff into poſſeſſion of all the defendant's eſtate, in order that he may pay himſelf: and the ſame may be the puniſhment of contumacy.

3. It is true that by practice a ſequeſtration has grown into a chancery-proceſs in the laſt ſtage of contempt. But by the civil law, the property in debate may be wreſted from its poſſeſſor, when he has been guilty of no contempt, and may continue with the ſequeſtrator, be the ſuit depending for any number of years whatſoever.

4. To what a height of inſult and delay may not a dilatory exception to a judge be carried?

5. The oaths have not leſs ſingularity in them.

The ſuppletory oath is given by the judge to the plaintiff or defendant upon half proof being already made; which being joined with the half proof ſupplies a ſufficient quantum of proof.

The deciſive oath is, where one of the litigants not being able to prove his accuſation, offers to ſtand or fall by the oath of his adverſary; and the adverſary is bound to accept it, or make the ſame propoſal back again, under the penalty of condemnation.

The oath of calumny, is, where the plaintiff or defendant is required to ſwear, that he believes himſelf to be engaged in a juſt cauſe.

To theſe ſpecimens, others might be added, equally exceptionable. But as they indicate the general ſpirit of the civil law, in its forms and modes, limitations of them ought to be ſearched for.

It cannot be denied, that the nation, whoſe juriſprudence is the ſource of our own, preſents the beſt limitations; and that they ought to be adopted, until better ſhall be deviſed. And better may certainly be prepared under the auſpices of Congreſs.

VI One place for holding the diſtrict and circuit courts.

Congreſs evinced their anxiety that the adminiſtration of juſtice ſhould be as convenient as poſſible, to the citizens of the United States, when they allotted alternate places for the ſeſſions of the diſtrict and circuit courts. Although it may be doubted, whether it would not be more agreeable to the public to be ſummoned to ſome central ſpot, yet to reduce theſe places to one in each diſtrict, without cogent reaſons, might awaken diſcontent. But ſuch a riſque may be encountered with ſafety, as it is defended by a fair prediction of the miſchiefs which await the old plan.

1. Either the records, or copies of them, muſt travel with the courts. By the former ſtep they would be always liable to loſs or injury; by the latter, the expenſe to clients would be greatly increaſed. It will not be enough to make up a ſcanty niſi prius roll only; becauſe the court which tries the cauſe, will enter judgment, and muſt therefore have the documents intire.

2. Generally ſpeaking, two ſets of lawyers will be retained. The ſame practitioners will not deſert the more profitable buſineſs of the ſtate courts, to attend two federal courts, widely diſtant from each other, and very probably interfering with the terms of the ſtate courts: and if they do not ride with the judges, the proſpect is equal, that a cauſe, the original writ of which is returnable in one place, may be ultimately heard at the other.

3. The original writs of ſuits will moſt commonly be returnable to the place neareſt to the reſidence of the witneſſes. But if they are to go to the more remote place, coſts will be multiplied, and themſelves put to additional trouble.

4. If a culprit ſhould not be tried at the firſt ſeſſion, and the judges cannot hold a ſpecial intermediate ſeſſion, he muſt be tranſported in irons to the next place of ſeſſion, or languiſh in gaol, until the court ſhall meet at the place of his confinement. And it will be very rare, that a ſpecial ſeſſion can be holden by the judges of the ſupreme court at leaſt, as their duty will haſten them to ſome other circuit, and from thence to the ſeat of government.

VII. Rules of deciſion.

1. It is conjectured that the common law was omitted among the rules of deciſion, as having been already the law of the United States. Moſt probably this will be ſeldom if ever controverted. But in one aſpect the exiſtence of the common law, as the law of the United States, is equivocal. For if the doctrines of the common law can be introduced into the federal courts, only by recurring to them for the explanation of the language, uſed in the laws of the United States, and of particular ſtates; or by the connection which the common law will have with moſt of the ſuits in the federal courts, as ariſing within ſome articular ſtate: ſome parts of the common

law, which do not fall within either of theſe characters, will be eſtranged from our ſyſtem.

To cut off then ſuch altercation, is not unworthy the care of Congreſs.

2. But the common law not being totally without blemiſh, has been occaſionally improved by ſtatute. Is the wiſdom of theſe improvements to be diſcarded? It is true indeed, that there ought to be a repugnance to naturalize the ſtatute book of a foreign nation, even for a moment. But the fact is, that the United States have not yet had ſufficient leiſure to diſengage themſelves from it, by enacting a code for themſelves. The time will come (perhaps it has already come) when ſuch a work will be indiſpenſable. But until it ſhall be completed, it will be far leſs diſgraceful to accept, under proper reſtrictions, ſome part of our law from an alien volume, with which every ſtate is well acquainted, and to which the people have been accuſtomed from their infant ſettlements, than abruptly to unhinge ancient legal tenets. And here the Attorney-General begs leave to conjecture, that if the two clauſes, concerning the forfeiture of the penalty annexed to articles, &c. and concerning abatements, both of which have originated from ſtatutes, ſhould alone be inſerted, every other part of the ſtatutes, would be excluded by conſtruction; except where they are the laws of a particular ſtate, and in caſes belonging to that ſtate.

Theſe appear to be the capital deſiderata. Other alterations will be propoſed in the draught, which is now offered, in obedience to the ſecond part of the order; namely, that a report be made of ſuch proviſions as may ſeem adviſeable.

SECOND PART.

THIS bill, although not formally divided into cardinal parts, is yet diviſible into four. The firſt contains all that is peculiar to the organization of the diſtrict courts; the ſecond, to that of the circuit courts; the third, to that of the ſupreme court; and the fourth, what is common to two, or the whole of them.

The conſtitution, the common law, and equity have ſhortened the detail. But in the progreſs of the draught, the alternative was always in view, either to make it immenſely prolix, by re-enacting the neceſſary ſtatutes, or to conſider that thoſe of a certain general nature would be ſpecially adopted. For the Attorney-General repeats, that the chaſm will be found diſtreſſing in practice without ſuch adoption. The latter then was preferred, as being incapable of any fatal error. In the former too much might have been omitted without longer premeditation, and the very changes of language might generate confuſion.

He therefore requeſts, that whenſoever, on the peruſal, any thing ſeems to be too ſlightly touched, or unnoticed, it ſhould be enquired, in what manner the Conſtitution of the United States, equity, the common and ſtatute law have provided for the caſe, and whether they have not provided ſufficiently.

A BILL for amending the ſeveral Acts concerning the JUDICIAL COURTS *of the United States.*

BE it enacted by the Senate and Houſe of Repreſentatives of the United States of America in Congreſs aſſembled, that the United States ſhall be, and they are hereby divided into fifteen diſtricts, to be limited and called as follows, 1. Diviſion into diſtricts.

to wit: One to conſiſt of that part of the ſtate of Maſſachuſetts which lies eaſterly of the ſtate of New-Hampſhire, and to be called Maine diſtrict; one to conſiſt of the ſtate of New-Hampſhire, and to be called New-Hampſhire diſtrict; one to conſiſt of the remaining part of the ſtate of Maſſachuſetts, and to be called Maſſachuſetts diſtrict; one to conſiſt of the ſtate of Rhode-Iſland and Providence Plantations, and to be called the diſtrict of Rhode-Iſland and Providence Plantations; one to conſiſt of the ſtate of Connecticut, and to be called Connecticut diſtrict; one to conſiſt of the ſtate of New-York, and to be called New-York diſtrict; one to conſiſt of the ſtate of New-Jerſey, and to be called New-Jerſey diſtrict; one to conſiſt of the ſtate of Pennſylvania, and to be called Pennſylvania diſtrict; one to conſiſt of the ſtate of Delaware, and to be called Delaware diſtrict; one to conſiſt of the ſtate of Maryland, and to be called Maryland diſtrict; one to conſiſt of the ſtate of Virginia, except that part called the diſtrict of Kentucky, and to be called Virginia diſtrict; one to conſiſt of the diſtrict of Kentucky, and to be called Kentucky diſtrict; one to conſiſt of the ſtate of North-Carolina, and to be called North-Carolina diſtrict; one to conſiſt of the ſtate of South-Carolina, and to be called South-Carolina diſtrict; and one to conſiſt of the ſtate of Georgia, and to be called Georgia diſtrict. [*Note* 1.]

2. Diſtrict courts and judges.

And be it further enacted, That there be a court called a diſtrict court in each of the aforeſaid diſtricts; that it ſhall conſiſt of one judge, who ſhall reſide in the diſtrict for the court of which he is, or ſhall be appointed, and ſhall be called a diſtrict judge; and that before he proceeds to execute the duties of his ſaid office, he ſhall take the following oath or affirmation, to wit: "I, A.B. do ſolemnly ſwear or affirm, that I will adminiſter juſtice without reſpect to perſons, and do equal right to the poor and to the rich; and that I will faithfully and impartially diſcharge and perform all the duties incumbent on me as judge of the diſtrict of according to the beſt of my abilities and underſtanding, agreeably to the conſtitution and laws of the United States. So help me God:"—Which oath or affirmation ſhall be adminiſtered by any one of the juſtices of the ſupreme court of the United States; any diſtrict judge of the United States; any judge or juſtice of the peace for the ſtate forming the diſtrict; or the clerk of the diſtrict court: and a certificate thereof ſhall be recorded in the diſtrict court.

3 Seſſions of the diſtrict courts.

1. Stated.

And be it further enacted, That each diſtrict court ſhall hold two ſtated ſeſſions in every year, at the times and places, and for the terms following, that is to ſay: [*Note* 2.]

2. Special.

That each diſtrict court ſhall alſo hold ſpecial ſeſſions for the purpoſes herein after mentioned, at ſuch times as the judge thereof ſhall appoint, and at the places following, that is to ſay:

Proviſo, as to the place and adjournment.

Provided always, That the ſaid courts ſhall be holden in ſome public courthouſe, where the ſame can be obtained; and that it ſhall be lawful for the Preſident of the United States, in vacation, or to the reſpective courts, if it ſhall be rendered neceſſary by any infectious diſorder or other cauſe, to direct the ſeſſions of the ſaid courts, whether ſtated or ſpecial, to be holden at ſome more fit place within the ſaid diſtricts reſpectively, until the ſaid cauſe ſhall be removed. [*Note* 3.]

And be it further enacted, That no ſtate court ſhall take cognizance of, or exerciſe juriſdiction in any of the following caſes, to wit : 4. Excluſion of the ſtate courts.

1. Caſes of admiralty, and maritime juriſdiction.
2. Controverſies, to which the United States ſhall be a party defendant.
3. Controverſies, to which a particular ſtate ſhall be a party defendant ; except where a ſtate may have authorized a ſuit to be brought againſt itſelf in its own courts.
4. Controverſies for lands claimed under grants of different ſtates.
5. Treaſon againſt the United States, and crimes and offences created by Congreſs, unleſs the cognizance thereof ſhall be veſted by law in the ſaid ſtate courts, or ſtate magiſtrates. And,
6. Rights created by Congreſs, and having a ſpecial remedy given to them in the federal courts. [*Note* 4.]

And be it further enacted, That each diſtrict court ſhall, under the regulations and reſtrictions hereinafter mentioned, have original juriſdiction of all caſes in law and equity, ariſing— 5. Juriſdiction of the diſtrict courts.

1. Under the Conſtitution of the United States.
2. The laws of the United States : And,
3. Treaties made, or which ſhall be made under their authority.
4. Of all caſes affecting ambaſſadors, and other public miniſters being plaintiffs, or conſuls or vice-conſuls, being plaintiffs or defendants. [*Note* 5.]
5. Of all civil caſes of admiralty and maritime juriſdiction.
6. Of piracies and felonies on the high ſeas.
7. Of crimes and offences created by Congreſs, ariſing within its proper diſtrict.
8. Of controverſies upon rights created by Congreſs, and having a ſpecial remedy given thereto in the federal courts.
9. Of all controverſies to which the United States ſhall be a party plaintiff.
10. Of all controverſies between a ſtate being plaintiff, and the citizens of another ſtate.
11. Of all controverſies between citizens of different ſtates not claiming lands under the grants of different ſtates.
12. And of all controverſies between a ſtate being plaintiff, and foreign citizens or ſubjects, or between the citizens of a ſtate, and foreign citizens or ſubjects.

Provided always, and be it further enacted, That the aforeſaid juriſdiction of the diſtrict courts ſhall be under the regulations and reſtrictions following, that is to ſay : 6. Regulations and reſtrictions of the diſtrict juriſdiction.

1. No perſon ſhall ſue out any original proceſs, or commence any original ſuit in a diſtrict court for the trial of any matter or thing of leſs value than dollars, on pain of having the ſame diſmiſſed with coſts ; except in caſes of admiralty and maritime juriſdiction, and in offences againſt the revenue laws. [*Note* 6.]

2. No ſuit ſhall be brought or ſuſtained in equity, in the ſaid diſtrict courts, except in caſes of fraud, accident, truſt, and unconſcionable hardſhip, or where the mode of proof, or the mode of relief at common law, be incompetent to the caſe of the complainant, or where perſons, not reſident in the United States, and having any eſtate or debts in the hands of another, reſident within the diſtrict for which ſuch court is held, ſhall, together with that other perſon, be made defendant ; and in the laſt mentioned caſe, the decree may ſubject ſuch eſtate and debts to the demand of the complainant. [*Note* 7.]

3. The judge of a diſtrict court may iſſue writs of ne-exeat, returnable to the ſaid court, againſt any perſon who is about to depart from any diſtrict.

and who may be liable to be ſued in equity in the ſaid diſtrict courts. The writs of ne-exeat, ſhall command the defendant to find ſufficient ſecurity, in a ſum to be expreſſed therein by the direction of the judge, that he will not depart the diſtrict without the leave of the court; and the plaintiff, or ſome reſponſible perſon in his behalf, ſhall, at the time of obtaining the writ, enter into bond with ſufficient ſecurity, in the clerk's office of the diſtrict court, to anſwer all damages which may accrue to the defendant from the ſaid writ.

4. Writs of injunction in equity, may be granted by the judge of a diſtrict court, to judgments of the ſaid court at common law. But the plaintiff, or ſome reſponſible perſon in his behalf, ſhall, at the time of obtaining the ſaid writ, enter into bond with ſufficient ſecurity in the clerk's office of the diſtrict court, to anſwer damages at the rate of ten per centum, in caſe ſuch injunction ſhall be diſſolved. And no injunction in equity ſhall be granted by a diſtrict court to a judgment at law of a ſtate court. [*Note* 8.]

5. The juriſdiction herein before given to the diſtrict courts over caſes ariſing under the Conſtitution, the laws and treaties of the United States, ſhall not be conſtrued to comprehend ſuch caſes in which the United States, or a particular ſtate, ſhall be defendant. [*Note* 9.]

6. In all crimes and offences tried by any diſtrict court, the puniſhment for which, if conſiſting of ſtripes, impriſonment, or a fine, is left to the diſcretion of a jury or the court, the ſtripes ſhall not exceed thirty, nor the impriſonment ſix calendar months, nor the fine one hundred dollars. And whereſoever, in any crime or offence, cognizable under the authority of the United States, the puniſhment by ſtripes, impriſonment or fine be expreſsly defined by law, and be greater than the number, the time, and the ſum aforeſaid, or whereſoever the puniſhment ſhall affect life or limb, no diſtrict court ſhall exerciſe juriſdiction therein, unleſs the offender being actually in priſon, ſhall, by petition to the ſaid court, requeſt it; and thereupon, if it ſhall appear to the ſaid court that due notice and ſufficient time have been given to the officers of the United States concerned, to prepare for the hearing, and that the circuit courts herein after mentioned, have not already had poſſeſſion of the caſe, and that it would tend to expedite its deciſion, if the ſaid diſtrict court ſhould take cognizance of it, it ſhall be lawful for the ſaid diſtrict court to hear and determine the ſame; but this reſtriction of the juriſdiction by this act given to the diſtrict courts, ſhall not be conſtrued to extend to the diſtrict courts in the diſtricts of Kentucky or Maine. [*Note* 10.]

7. No civil ſuit, being of a tranſitory nature only, ſhall be brought againſt an inhabitant of the United States, in any diſtrict court other than that of the diſtrict to which he belongs, unleſs proceſs for the ſame cauſe ſhall have been firſt returned in the ſaid diſtrict court, that he was not found, or he ſhall be abſconding from his ſaid diſtrict at the time of ſuch ſuit being brought, or he ſhall be privy or a party in intereſt with a perſon reſident within the diſtrict of the firſt mentioned court: And all ſuits brought contrary hereto, may be diſmiſſed on motion.

8. No diſtrict court ſhall have cognizance of any ſuit, to recover the contents of any promiſſory note, or other choſe in action in favor of an aſſignee, unleſs a ſuit might have been proſecuted in ſuch court to recover the ſaid contents, if no aſſignment had been made, except in caſes of foreign bills of exchange.

9. No perſon whatſoever ſhall, in any civil action or ſuit brought in a diſtrict court, be arreſted or ſummoned in one diſtrict for trial in another, unleſs he be privy or a party in intereſt as aforeſaid, in which caſe he may be ſummoned. [*Note* 11.]

10. Local actions ſhall be brought in the court of the diſtrict in which they ariſe.

11. No ſpecial ſeſſion of a diſtrict court ſhall be held, but for civil cauſes of admiralty and maritime juriſdiction as aforeſaid; and for ſeizures under the laws of impoſt, navigation or trade of the United States, and no ſuch cauſe ſhall be heard at any ſtated ſeſſion of the ſaid court. [*Note* 12.]

7. Conſervators of the peace.

And be it further enacted, That the judges of the diſtrict courts ſhall be conſervators of the peace of the United States throughout their reſpective diſtricts. [*Note* 13.]

8. Clerks of the diſtrict courts.

And be it further enacted, That each diſtrict court, or the judge in vacation ſhall have power to appoint the clerk thereof, who, before he enters upon the execution of his office, ſhall take the following oath or affirmation, to be adminiſtered by the ſaid judge: "I, A. B. being appointed clerk of the diſtrict of do ſolemnly ſwear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the ſaid court, and that I will faithfully and impartially diſcharge and perform all the duties of my ſaid office, according to the beſt of my abilities and underſtanding. So help me God:" but the words "So help me God," ſhall be omitted in all caſes of affirmation. And the ſaid clerk ſhall give bond to the United States in a reaſonable penalty, with one ſurety at leaſt, to be approved by the ſaid diſtrict judge, conditioned faithfully to diſcharge the duties of his office, and ſeaſonably to record the decrees, judgments, and orders of the ſaid court; which bond ſhall be recorded in the ſaid diſtrict court, and ſhall not be void upon the firſt recovery, but may be put in ſuit, and proſecuted from time to time, at the coſts and charges of any party or parties injured, until the whole ſum of the penalty expreſſed in ſuch bond ſhall be recovered thereon.

9. Marſhals of the diſtrict courts.

And be it further enacted, That a marſhal ſhall be appointed in and for each diſtrict for the term of four years; but ſhall be removable from office at pleaſure. That before he enters on the duties of his office, he ſhall become bound to the United States before the judge of the ſaid diſtrict, jointly and ſeverally with two good and ſufficient ſureties, inhabitants, and freeholders in the ſaid diſtrict, to be approved by the ſaid diſtrict judge, in the penal ſum of twenty thouſand dollars, conditioned for the faithful diſcharge of the ſaid office by himſelf and his deputies herein after mentioned; and ſhall moreover take before the ſaid judge, the following oath or affirmation, omitting in the caſe of affirmation the words, "So help me God." "I, A. B. do ſolemnly ſwear, or affirm, that I will faithfully execute all lawful precepts directed to the marſhal of the diſtrict of under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the marſhal of the ſaid diſtrict of during my continuance in the ſaid office, and take only my lawful fees. So help me God." That the ſaid marſhal ſhall be adjudged to be an officer of the court of the diſtrict for which he ſhall be ſo appointed; ſhall attend the ſame accordingly; ſhall execute throughout the diſtrict all writs, precepts, ſummonſes, and proceſs iſſued under the authority of the United States, and directed to him; and ſhall have power to command all neceſſary aſſiſtance in the execution of his duty.

That it ſhall be alſo lawful for each marſhal to appoint, as he ſhall ſee occaſion, one or more deputies, who ſhall be removable from office by the diſtrict judge, and before they enter on the duties of their office, ſhall take before the diſtrict judge the oath or affirmation aforeſaid, preſcribed to be taken by the marſhal, changing the word "marſhal," where it occurs in the ſecond place in the ſaid oath or affirmation, to the words "the marſhal's deputy;" that in caſe of the death of any marſhal, his deputy or deputies ſhall continue in office, unleſs ſpecially removed as aforeſaid, and ſhall execute the ſame in the name of the deceaſed, until another marſhal ſhall be duly qualified; that the executor or adminiſtrator of any deceaſed marſhal ſhall have like remedy for the faults and

misfeaſances in office of his deputy or deputies, which ſhall happen after the ſaid marſhal's death, as for thoſe which may have happened in his life time.

That every marſhal, and a deputy or deputies, when removed from office, or when the term for which the marſhal was appointed, ſhall expire, ſhall have power notwithſtanding to execute all ſuch writs, precepts, ſummonſes and proceſs as may be in their hands reſpectively, at the time of ſuch removal or expiration of office, unleſs the judge of the diſtrict court ſhall otherwiſe direct. [*Note* 14.]

That the marſhal, or in caſe of his death his eſtate ſhall be anſwerable for the delivery to his ſucceſſor of all priſoners who may be in his cuſtody at the time of his death or removal, or the expiration of the term of his appointment, and for that purpoſe the marſhal when living, or his deputies in caſe of his death, may retain ſuch priſoners in cuſtody until a ſucceſſor ſhall be duly qualified, unleſs the judge of the diſtrict court ſhall otherwiſe direct. But nothing herein contained ſhall ſubject a marſhal for any omiſſion or misfeaſance of the keepers of the ſtate gaols.

That in all caſes wherein the marſhal or his deputy ſhall be intereſted, or ſhall not be an indifferent perſon, the writs, precepts, ſummonſes and proceſs ſhall be directed to ſuch diſintereſted or indifferent perſon as the diſtrict judge may appoint; and the perſon ſo appointed, is hereby authorized to execute and return the ſame.

That the bond ſo to be given as aforeſaid by each marſhal, ſhall be forfeited, not only by the defaults and misfeaſances in office of himſelf or his deputy or deputies in his life time, but alſo for the defaults and misfeaſances of a deputy or deputies after his death in the caſes aforeſaid; ſhall be recorded in the ſaid diſtrict court; and ſhall not be void upon the firſt recovery, but may be put in ſuit, and proſecuted from time to time, by and at the coſts and charges of any party or parties injured, until the whole ſum of the penalty expreſſed in ſuch bond ſhall be recovered thereon.

And that the ſaid marſhal ſhall be liable on motion, after ten days previous notice, to judgment in his diſtrict court, and execution, for monies received by himſelf or his deputies, by virtue of their offices, and not duly paid to the perſon intitled thereto, upon application for the ſame.

10. Fees of clerks and marſhals in the diſtricts

And be it further enacted, That until it ſhall be otherwiſe provided by law, the rates of fees (except the fees to judges) and the allowances to witneſſes, ſhall be the ſame in the diſtrict courts, as in ſimilar caſes in the ſupreme court in the laſt reſort, of the ſtate of which the diſtrict conſiſts; and for the ſervices of the clerks and marſhals in caſes which are unlike to thoſe in the ſaid ſupreme court, a reaſonable compenſation ſhall be paid by the parties, to be determined by the diſtrict courts, according to equity and the nature of the caſe; that all the ſaid fees and compenſations not received in caſh, ſhall be collected by the marſhal or his deputies, according to the laws of the ſtate for collecting ſuch fees, and ſhall be accounted for to the ſaid diſtrict courts at every ſeſſion, when an entry ſhall be made of the ſums appearing to have accrued, a copy of which ſhall be tranſmitted by the judge to the circuit courts, for the purpoſes herein after mentioned.

11. Adjournment of diſtrict courts.

And be it further enacted, That there ſhall be no diſcontinuance of any ſuit, proceſs, matter or thing returnable to, or depending in any diſtrict court, although a judge ſhall not have been appointed to a vacancy, or the judge ſhall fail to attend at the commencement, or any other day of a ſeſſion; but the judge may at the commencement of a ſeſſion, by a written order, direct the marſhal of the diſtrict to adjourn the court from day to day, for three days ſucceſſively, and if he ſhall not attend on the fourth, or having attended one day, ſhall fail to attend on a ſubſequent day of a ſeſſion, the court ſhall ſtand adjourned to the court in courſe.

And be it further enacted, That such writs, summonses, and other process, shall be issued from the several district courts for the commencement and prosecution of any civil action, suit or matter therein; and that the forms and modes of proceeding in conducting the same to a trial or hearing shall be such as the supreme court, according to the regulations herein after provided shall direct. But until directions shall be so given by the supreme court, and in cases not herein otherwise provided for, the writs, summonses, process, forms and modes aforesaid, shall be in cases at common law, as nearly as may be according to the practice of the highest state court of common law in each district, having original and general jurisdiction; and in cases in equity, according to the practice of the highest state court of equity in each district, having original and general jurisdiction, and where no such court of equity exists in any state, the district court shall proceed in equity, according to the forms, modes, rules and usages which belong to a court of equity, as contradistinguished from a court of common law; and in cases of admiralty, the district courts shall proceed according to the practice of the admiralty, properly so called: and every district judge shall moreover have the same power to issue writs of habeas corpus, returnable in vacation before himself, as in session returnable to the court. 12. Proceedings in the district courts.

And be it further enacted, That it shall be lawful for each district judge, for good cause shewn, to direct appearance-bail to be required; and for every district court, upon like cause, to require special bail: that a plaintiff issuing a capeas, may also obtain an indorsement thereon from the clerk, requiring appearance-bail, upon lodging with the said clerk an affidavit, that the defendant from whom bail is so required, is, as far as the plaintiff knows or believes, not a resident within the United States, or that a writ has been returned in the same case to the court of the district in which he resides, and that the defendant was not found there, and that the defendant is indebted to the plaintiff to the amount of or detains personal property from him to a like amount; and shall moreover give in the clerk's office, bond with sufficient surety to the defendant, in a reasonable penalty, conditioned to answer all damages which may accrue to the defendant, if it should thereafter appear, that bail has been thus required for the sake of vexation. 13. Bail in the district courts.

That the several district courts may appoint proper persons for taking special bail; who shall without delay transmit the recognizances of bail to the clerks of the said courts.

That the several marshals and their deputies, shall take bail bonds for appearances; and shall transmit them without delay to the clerks of their respective courts.

That if the sufficiency of bail be objected to, reasonable notice of such objection shall be given to the marshal or the deputy taking such bail, before a motion shall be made concerning it: that if upon a motion before the court, the bail be adjudged insufficient, the marshal shall be answerable therefor; Provided always, that it shall be a justification of the marshal, if an affidavit shall have been made previous to the acceptance of the bail, verifying the sufficiency thereof; unless it can be proved, that the said marshal, or the deputy who took the same, had good reason to suspect such sufficiency.

And that the special bail may surrender the principal either before or after judgment, to the marshal or his deputies belonging to the court in which the suit shall be brought, and may thereby discharge himself. And if the principal cannot give other special bail, he shall be committed. [*Note* 15.]

And be it further enacted, That the executions to be issued from the district courts of the United States, shall be elegit, capias ad satisfaciendum, fieri facias, and levari facias: that the return days thereof shall be appointed by the district courts respectively: that there shall be the space of between the date 14 Executions from the district courts.

of the executions, and the return days: Provided always, That when judgment ſhall be entered in any diſtrict court, in a civil action, it ſhall be lawful for the ſaid court to ſtay the execution for forty-two days from the time of entering the judgment. [*Note* 16.]

15. Appeals and writs of error on the judgments of the diſtrict courts.

And be it further enacted, That from every final decree rendered by any diſtrict court (except thoſe of Kentucky and Maine) in the exerciſe of its admiralty and maritime and equity juriſdiction, and in caſes of ſeizure under the laws of impoſt, navigation or trade of the United States, an appeal ſhall be allowed to the court of the circuit in which the diſtrict lies; and on all other final judgments rendered by the ſaid diſtrict courts, a writ of error may be inſtituted in the ſaid circuit court: And appeals and writs of error may in like manner be inſtituted in the ſupreme court of the United States, on the final decrees or judgments of the diſtrict courts of Kentucky or Maine. But all ſuch appeals and writs of error ſhall be ſubject to the rules and regulations herein after provided; and it ſhall be alſo the duty of the ſaid diſtrict courts, in ſuits in equity, and of admiralty and maritime juriſdiction, to cauſe the facts on which they found their ſentence or decree, fully to appear upon the record, by inſerting the depoſitions of the witneſſes ſworn in the cauſe, and the exhibits therein, at large. [*Note* 17.]

16. Diviſion into circuits.

And be it further enacted, That the diſtricts aforeſaid, except thoſe of Kentucky and Maine, ſhall be divided into three circuits, and ſhall be called the Eaſtern, the Middle, and the Southern Circuit: that the Eaſtern Circuit ſhall conſiſt of the diſtricts of New-Hampſhire, Maſſachuſetts, Rhode-Iſland and Providence Plantations, Connecticut, and New-York; that the Middle Circuit ſhall conſiſt of the diſtricts of New-Jerſey, Pennſylvania, Delaware, Maryland, and Virginia; and that the Southern Circuit ſhall conſiſt of the diſtricts of North-Carolina, South-Carolina, and Georgia.

17. Circuit courts; days; terms.

And be it further enacted, That there ſhall be a court, called a circuit court in each of the aforementioned circuits, which ſhall be holden in each diſtrict of the ſaid circuits twice in every year, on the following days, to wit:

That the ſaid circuit courts ſhall alſo have power to hold ſeſſions for the trial of criminal cauſes at any other time at their diſcretion, or the diſcretion of the ſupreme court; and that the terms during which the ſaid circuit courts ſhall continue to ſit at their two ſtated ſeſſions aforeſaid, ſhall be juridical days, unleſs the buſineſs ready for trial, ſhall be ſooner diſpatched; in which caſe, the court ſhall be adjourned to the court in courſe. [*Note* 18.]

18. Places for holding the circuit courts.

And be it further enacted, That the places for holding the ſaid circuit courts in the diſtricts of the ſeveral circuits aforeſaid, ſhall be as follow:

Provided always, That the ſaid circuit courts ſhall be holden in ſome public court houſe, where the ſame can be obtained; and that it ſhall be lawful for the Preſident of the United States, in vacation, or to the reſpective courts, if it ſhall be rendered neceſſary by any infectious diſorder, or other cauſe, to direct the ſeſſions of the ſaid courts to be holden at ſome more fit place within the ſaid diſtricts reſpectively, until the ſaid cauſe ſhall be removed.

19. Judges of the circuit courts.

And be it further enacted, That the circuit courts aforeſaid, ſhall conſiſt of the judges of the diſtrict courts comprehended within the ſaid circuits reſpectively: that before they proceed to execute the duties of this office, they ſhall

take, as judges of the circuit courts, the oath or affirmation, *mutatis mutandis*, herein before prescribed to them, as district judges, to be administered by any justice of the supreme court of the United States, any district judge of the United States, within his proper district, or any judge or justice of the peace for the state belonging to the circuit: that a certificate thereof shall be recorded in the circuit court; and that any three of the district judges in the eastern and middle circuits; and any two of the district judges in the southern circuit shall constitute a quorum: Provided that no district judge shall give a vote in any appeal or writ of error brought to reverse his own decision; but he may assign the reasons of such decision. [*Note* 19.]

And be it further enacted, That the circuit courts aforesaid, shall, under the regulations and restrictions hereinafter mentioned, have original jurisdiction of all cases in law and equity arising

20. Jurisdiction of the circuit courts.

1. Under the Constitution of the United States.

1. *Original.*

2. The laws of the United States.

3. And treaties made, or which shall be made under their authority.

4. Of all cases affecting ambassadors and other public ministers, being plaintiffs, or consuls or vice-consuls, being plaintiffs or defendants.

5. Of all controversies in which the United States shall be a party.

6. Of all controversies between a state, being plaintiff, and the citizens of another state. [*Note* 20.]

7. Of all controversies between citizens of different states.

8. Of all controversies between citizens of the same state, claiming lands under grants of different states.

9. Of all controversies between a state, being plaintiff, or the citizens thereof, and foreign states, citizens or subjects.

10. Of piracies and felonies committed on the high seas.

11. Of crimes and offences created by Congress, arising within their respective circuits: And

12. Of controversies arising upon rights created by Congress, and having a special remedy given thereto in the federal courts.

That the said circuit courts shall also have appellate jurisdiction over the district courts, under the regulations and restrictions hereinafter provided, and may issue writs of prohibition to the circuit courts, when proceeding as courts of admiralty and maritime jurisdiction, as well as writs of consultation; writs of mandamus, in cases warranted by the principles and usages of law; and under the authority of the United States; and also writs of certiorari to the district or state courts, according to the rules herein after prescribed.

2. *Appellate.*

Provided always, and be it further enacted, That the aforesaid jurisdiction of the circuit courts shall be under the regulations and restrictions following; that is to say:

21. Regulations and restrictions of the circuit jurisdiction.

1. No person shall sue out any original process, or commence any original suit in a circuit court, for the trial of any matter or thing of less value than dollars, on pain of having the same dismissed with costs.

2. No suit shall be brought or sustained in equity in the said circuit courts, except in cases of fraud, accident, trust, or unconscionable hardship, or where the mode of proof, or the mode of relief at common law, be incompetent to the case of the complainant, or where persons not resident in the United States, and having any estate or debts in the hands of another person resident within the district in which such circuit court is held, shall, together with that other person, be made defendant: and in the last mentioned case, the decree may subject such estate and debts to the demand of the complainant.

3. The several circuit courts, and any judge thereof, may issue writs of *ne-exeat*, returnable to the said courts, against any person who is about to depart from the district, and who may be liable to be sued in equity in the said circuit

courts reſpectively. The writs of ne-exeat ſhall comand the defendant to give ſufficient ſecurity in a ſum to be expreſſed therein by the direction of the court or judge, that he will not go out of the ſaid diſtrict, without leave of the ſaid court; and the plaintiff, or ſome reſponſible perſon in his behalf, ſhall, at the time of obtaining the writ, enter into bond, with ſufficient ſecurity, in the clerk's office, of the circuit court, to anſwer all damages which may accrue to the defendant from the ſaid writ.

4. Writs of injunction in equity may be granted by the ſeveral circuit courts, or any judge thereof, to judgments of the ſaid courts reſpectively at common law, or to judgments of common law at any diſtrict court within their reſpective circuits: but the plaintiff, or ſome reſponſible perſon in his behalf, ſhall, at the time of obtaining the ſaid writ, enter into bond, with ſufficient ſecurity, in the clerk's office of the circuit court, to anſwer damages at the rate of ten per centum, in caſe ſuch injunction ſhall be diſſolved: and no injunction in equity ſhall be granted by a circuit court to a judgment at law of a ſtate court.

5. The juriſdiction herein before given to the circuit courts over caſes ariſing under the Conſtitution, the laws and treaties of the United States, ſhall not be conſtrued to comprehend ſuch caſes in which a particular ſtate ſhall be defended. [*Note* 20.]

6. No civil ſuit, being of a tranſitory nature only, ſhall be brought againſt an inhabitant of the United States, in any circuit court other than that which ſhall be holden in the diſtrict to which he belongs, unleſs proceſs for the ſame cauſe ſhall have been firſt returned in the ſaid circuit court, ſo to be holden, that he was not found, or he ſhall be abſconding from his ſaid diſtrict, at the time of ſuch ſuit being brought; or he ſhall be a privy or party in intereſt with a perſon reſident in a diſtrict within the circuit: and all ſuits brought contra-hereto, may be diſmiſſed on motion.

7. No circuit court ſhall have cognizance of any ſuit to recover the contents of any promiſſory note, or other choſe in action in favor of an aſſignee, unleſs a ſuit might have been proſecuted in ſuch court, to recover the ſaid contents, if no aſſignment had been made, except in caſes of foreign bills of exchange; and on a change of the venue herein after mentioned.

8. No perſon whatſoever, ſhall in any civil action or ſuit brought in a circuit court, be arreſted or ſummoned in one diſtrict for trial in another, unleſs he be a privy or party in intereſt as aforeſaid, or the venue be changed, as is herein after mentioned; in which caſe he may be ſummoned.

9. Local actions ſhall be brought in the circuit court to be holden in the diſtrict in which they ariſe.

22. Conſervators of the peace within the circuit.

And be it further enacted, That the judges of the circuit court ſhall be conſervators of the peace of the United States throughout their reſpective circuits.

23. Clerks of the circuit courts.

And be it further enacted, That the clerks of the diſtrict courts ſhall be alſo clerks of the circuit courts, appointed to be holden in their reſpective diſtricts: that they ſhall take as clerks of the circuit courts, an oath or affirmation of office, ſimilar to that preſcribed to them as diſtrict clerks; which oath or affirmation ſhall be adminiſtered by any juſtice or judge of the United States; and a certificate of the taking of which ſhall be recorded in the circuit court; and that the bond and ſurety given by them as clerks of the diſtrict courts reſpectively, ſhall ſtand and enure for their good conduct as clerks of the circuit courts.

24. Duty of marſhals in the circuit courts.

And be it further enacted, That the marſhals of the diſtricts aforeſaid, ſhall be adjudged to be officers of the circuit courts appointed to be holden in their reſpective diſtricts, and ſhall attend the ſame accordingly; that the ſaid deputies ſhall be removable from office by the circuit courts, while ſitting in the diſtricts to which the deputy or deputies ſo removed, belong; and that the ſaid marſhals and their deputies ſhall be bound to perform, throughout their reſpective di-

ſtricts, the ſame duties in relation to the buſineſs of the circuit courts ſitting in their diſtricts, as they ought by virtue of this act to perform in relation to the buſineſs of their diſtrict courts.

25. Fees of the clerks and marſhals.

And be it further enacted, That until it ſhall be otherwiſe provided by law, the fees and compenſations to the clerks and marſhals, and the allowances to witneſſes, ſhall be the ſame in the circuit, as in the diſtrict courts; that they ſhall be collected and accounted for to the circuit courts reſpectively, in the ſame manner as is preſcribed in the caſe of the diſtrict courts; that the circuit courts, ſhall, once in every year, determine upon ſome reaſonable ſatisfaction to be made to the clerks and marſhals within their circuits, in conſideration of their offices; that they ſhall thereupon enter upon record what ſum, not exceeding dollars to a clerk, nor dollars to a marſhal, in addition to the emoluments ariſing from the diſtrict and circuit buſineſs aforeſaid, they ought to receive; and the ſame ſhall be paid accordingly at the treaſury of the United States. [*Note* 21.]

26. Adjournment.

And be it further enacted, That there ſhall be no diſcontinuance of any ſuit, proceſs, matter or thing returnable to, or depending in, any circuit court, although a quorum of judges ſhall fail to attend at the commencement, or any other day of any ſeſſion: but if a majority of them ſhall fail to attend at the commencement of any ſeſſion, the marſhal of the diſtrict may adjourn the court from day to day for three days ſucceſſively; and if a quorum ſhall not attend on the fourth, or having attended one day, ſhall fail to attend on a ſubſequent day of a ſeſſion, the court ſhall ſtand adjourned to the court in courſe.

27. Proceedings.

And be it further enacted, That ſuch writs, ſummonſes, and other proceſs, ſhall be iſſued from the ſeveral circuit courts, for the commencement and proſecution of any civil action, ſuit, or matter therein; and that the forms and modes of proceeding in conducting the ſame to a trial or hearing, ſhall be ſuch as the ſupreme court, according to the regulations herein after provided, ſhall direct. But until directions ſhall be ſo given by the ſupreme court, the Attorney-General ſhall be ſummoned, where the United States are defendant; and in other caſes not herein otherwiſe provided for, the writs, ſummonſes, proceſs, forms, and modes aforeſaid, ſhall be in caſes at common law, as nearly as may be, according to the practice of the higheſt ſtate court of common law in each diſtrict where the circuit courts ſhall ſit, having original and general juriſdiction; and in caſes in equity, according to the higheſt ſtate court of equity in ſuch diſtrict, having original and general juriſdiction; and where no court of equity exiſts in any ſtate, the circuit court in ſuch ſtate ſhall proceed in equity, according to the forms, modes, rules, and uſages which belong to a court of equity, as contradiſtinguiſhed from a court of common law; and in caſes of admiralty, the diſtrict courts ſhall proceed according to the practice of the admiralty, properly ſo called; and every circuit judge ſhall moreover have the ſame power to iſſue writs of *habeas corpus*, returnable in vacation before himſelf, as a circuit judge, or before any other judge of his circuit, who ſhall happen to be within the diſtrict, as the circuit court has to iſſue ſuch writs returnable to the court.

28. Bail in the circuit courts

And be it further enacted, That the power of the circuit judges, as to appearance-bail, and of the circuit courts as to ſpecial bail and the appoinment of perſons for taking the ſame, and the right of the plaintiff to require bail, and all other matters and things concerning bail, ſhall be the ſame, and ſhall be governed by the ſame rules as are herein before preſcribed concerning bail in the diſtrict courts.

29. Executions in the circuit courts.

And be it further enacted, That the executions to be iſſued from the circuit courts ſhall be the ſame, as thoſe to be iſſued from the diſtrict courts; that the return days ſhall be appointed by the circuit courts in like manner; and execution may be ſtayed for the ſame time, as in the diſtrict courts. But it ſhall be lawful for a circuit court, for good cauſe, to direct executions to be iſſued

on judgments obtained in a diſtrict court, within its circuit, to any other diſtrict within the ſame.

30. Amenability of the circuit courts to the ſupreme court.

And be it further enacted, That upon any final decree or judgment, rendered by a circuit court, an appeal or writ of error may be brought in the ſupreme court of the United States, as herein after is provided; and that it ſhall be the duty of the circuit courts, in cauſes in equity, to cauſe the facts on which they found their decree, fully to appear upon the record by inſerting the depoſitions of the witneſſes ſworn in the cauſe, and the exhibits therein at large.

31. Supreme court. Judges and precedence.

And be it further enacted, That the ſupreme court of the United States ſhall conſiſt, as at preſent, of a chief juſtice, and five aſſociate juſtices, any four of whom ſhall be a quorum: that the aſſociate juſtices ſhall have precedence according to the date of their commiſſions, or when the commiſſions of two or more of them bear date on the ſame day, according to their reſpective ages.

32. Oath of juſtices of the ſupreme court.

And be it further enacted, That the juſtices of the ſupreme court, before they proceed to execute the duties of their reſpective offices, ſhall take the following oath or affirmation, to wit; "I, A. B. do ſolemnly ſwear or affirm, that I will adminiſter juſtice without reſpect to perſons, and do equal right to the poor and to the rich, and that I will faithfully and impartially diſcharge and perform all the duties incumbent on me as according to the beſt of my abilities and underſtanding, agreeably to the Conſtitution and laws of the United States. So help me God;" omitting in the caſe of an affirmation, the words "So help me God;" which oath or affirmation ſhall be adminiſtered by any juſtice or judge of the United States, or any clerk of the diſtrict or circuit court; and a certificate of the taking of which ſhall be recorded in the ſupreme court.

33. Seſſions and places.

And be it further enacted, That the ſupreme court ſhall ſit at the ſeat of government four times in every year, to wit; on the firſt Monday in the months of that each term ſhall continue for the ſpace of juridical days, unleſs the buſineſs depending before the ſaid court ſhall be ſooner diſpatched: but the ſaid court ſhall have power to prolong their ſeſſion beyond the term, for expediting the buſineſs depending before them, if they ſhall ſee cauſe.

34. Juriſdiction of the ſupreme court.

And be it further enacted, That the ſupreme court ſhall have original juriſdiction,

1. *Original.*

1. In all caſes affecting ambaſſadors, other public miniſters and conſuls: And,
2. In thoſe which a ſtate ſhall be a party.

2. *Appellate.*

That in the caſes of which the circuit courts aforeſaid, and the diſtrict courts of Kentucky and Maine have cognizance, the ſupreme court ſhall have appellate juriſdiction, under the regulations of appeals and writs of error herein after mentioned: that the ſupreme court ſhall have power to iſſue writs of mandamus according to law, and writs of *certiorari* to the circuit and ſtate courts, according to the rules herein after mentioned, to direct the writs, ſummonſes, proceſs, forms and modes of proceeding to be iſſued, obſerved and purſued by the ſaid ſupreme court, and the diſtrict and circuit courts, taking care that a letter miſſive, ſigned by the chief juſtice, ſhall be addreſſed, where a ſtate is defendant, to the executive thereof, and that the Attorney-General of the United States, where the United States are defendant, ſhall be ſummoned, and for good cauſe ſhewn, to change the venue in any ſuit depending in a circuit court, ſo as to cauſe the ſame to be tried in any other circuit court in the ſame circuit. [*Note* 22.]

35. Conſervators of the peace within the United States.

And be it further enacted, That the juſtices of the ſupreme court, ſhall be conſervators of the peace of the United States, throughout the ſame.

36. Reports.

And be it further enacted, That the juſtices of the ſupreme court ſhall, on the concluſion of any appeal or writ of error, ſtate the whole merits of the caſe, the queſtions ariſing therefrom, the opinions of the court thereupon, and a ſummary of the reaſons in ſupport of thoſe opinions; all which ſhall at the

end of each term, be entered in a book to be kept for that purpoſe, and copies ſhall be tranſmitted by the clerk to each diſtrict and circuit court: that it ſhall be the duty of each juſtice of the ſupreme court, preſent at the hearing of any appeal or writ of error, and differing from a majority of the court, to deliver his opinion in writing, to be entered as aforeſaid: and that each judge ſhall deliver his opinion in open court.

37. Table of fees and coſts.

And be it further enacted, That as ſoon as the juſtices of the ſupreme court ſhall have eſtabliſhed a ſyſtem of practice as aforeſaid, it ſhall be the duty of the Attorney-General to pepare and report to Congreſs, a table of fees and coſts.

38. Clerk of the ſupreme court.

And be it further enacted, That the ſupreme court, or any four juſtices thereof, in vacation, ſhall have power to appoint a clerk for the ſaid court, who ſhall, before he enters upon the execution of his office, give bond, with ſufficient ſureties, to be approved by the court, or the juſtices appointing him, to the United States, in the ſum of two thouſand dollars, conditioned faithfully to diſcharge the duties of his office, and ſeaſonably to record the decrees, judgments and orders of the ſaid court; which bond ſhall be recorded in the ſaid court, and ſhall not be void upon the firſt recovery, but may be put in ſuit and proſecuted from time to time, at the coſts and charges of any party or parties injured, until the whole ſum of the penalty expreſſed in ſuch bond ſhall be recovered thereon. And the ſaid clerk ſhall alſo take an oath or affirmation of office, ſimilar to that preſcribed in the caſe of a diſtrict clerk, *mutatis mutandis*; which oath or affirmation ſhall be adminiſtered by any judge of the ſupreme court, and a certificate of the taking of which ſhall be recorded in the ſaid court. And for his ſervices, the clerk of the ſupreme court ſhall receive ſuch allowance as the ſaid court ſhall adjudge, not exceeding dollars per annum, to be paid at the treaſury of the United States.

39. Marſhal of the ſupreme court.

And be it further enacted, That the marſhal of the diſtrict in which the ſupreme court ſhall ſit, ſhall be adjudged to be an officer of the ſaid court, and ſhall attend the ſame accordingly; that all the ſaid marſhals and their deputies ſhall be bound to perform throughout their diſtrict, the ſame duties in relation to the buſineſs of the ſupreme court, as they ought, by virtue of this act, to perform in relation to the buſineſs of their diſtrict courts; and the marſhal attending the ſaid court ſhall receive a reaſonable allowance per day for ſuch attendance, to be adjudged and certified by the ſaid court.

40. Adjournment of the ſupreme court.

And be it further enacted, That there ſhall be no diſcontinuance of any ſuit, proceſs, matter or thing returnable to, or depending in the ſupreme court, although a quorum of juſtices ſhall fail to attend at the commencement, or any other day of any ſeſſion; but if a majority of them ſhall fail to attend at the commencement of any ſeſſion, the marſhal of the diſtrict may adjourn the court from day to day for three days ſucceſſively; and if a quorum ſhall not attend on the fourth, or having attended one day, ſhall fail to attend on a ſubſequent day of a ſeſſion, the court ſhall ſtand adjourned to the court in courſe.

41. Bail.

And be it further enacted, That no bail ſhall be required in any caſe depending before the ſupreme court, without the ſpecial order of the court. [*Note* 23.]

42. Executions in the ſupreme court.

And be it further enacted, That the executions to be iſſued from the ſupreme court ſhall be the ſame as thoſe to be iſſued from the circuit and diſtrict courts: that the return days ſhall be appointed by the ſupreme court in like manner; and that the ſupreme court may, for good cauſe, direct executions to be iſſued on judgments obtained in a diſtrict or circuit court, to any other diſtrict or circuit.

43. Certiorari.

And be it further enacted, That it ſhall be lawful for either party in any action or ſuit, in law or equity, depending in any diſtrict court, to petition a judge of the circuit court of the circuit in which ſuch diſtrict lies, to remove the ſame to the ſaid circuit court to be holden in the ſaid diſtrict: and if it ſhall appear to the ſatisfaction of the ſaid judge, that there is good cauſe for a re-

moval, and that the cirucit court hath jurisdiction thereof, the said judge may direct the clerk to issue a certiorari for that purpose. But the said judge shall, if he see cause, require notice to be given of the said petition to the adverse party, his agent or attorney, before he decides thereon; and shall be first satisfied, where the plaintiff petitions for a removal, that the cause assigned for removal has arisen since the suit brought, or was unknown to him at the time of bringing the same: And the said circuit court may at any time, for good cause, remand the said suit or controversy to the district court, by *procedendo*. That the justices of the supreme court shall have like power to direct a certiorari to the circuit court, and the supreme court to remand by *procedendo*, in all cases, in which, by the Constitution of the United States, the supreme court has original jurisdiction. That a *certiorari* may also issue from any circuit court of the United States, for the removal of any suit in law or equity, depending in any state court within the circuit, to the circuit court, under the following regulations.

1. The said suit shall be cognizable by the circuit courts, with respect to value, and to the party or parties, or to the subject.

2. The defendant may at any time before trial, obtain a certiorari from the clerk of the circuit court for the removal, upon filing with the clerk of the circuit court, an affidavit, that he believes the said suit to be of a nature cognizable in the said court.

3. The circuit court shall, at the commencement of every term, direct the suits thus removed to be first called; when the defendant shall justify such removal by satisfactory proofs, on the pain of having the cause remitted by *procedendo*.

4. If on the trial, the court shall be of opinion, that the cause alledged for the removal was groundless, the defendant shall pay the costs of the suit, let the event thereof be what it will.

5. To prevent removals merely for the sake of delay, it shall be the duty of the circuit courts to expedite the trial of a suit thus removed, by the most effectual means consistent with a full defence.

6. The bail given in a state court, shall stand bound in the circuit courts.

7. A plaintiff in a state court may in like manner, and under a like penalty of costs, obtain a certiorari for the removal of a suit from a state court to the circuit court, upon filing with the clerk of the circuit court an affidavit, as is above directed in the case of a defendant; and also declaring in that affidavit, that the cause alledged for the removal, did not exist, or having existed, was not known to him at any time before the commencement of the term of the circuit court next preceding the application of the certiorari.

42. Appeals and writs of error.

And be it further enacted, That in appeals and writs of error, the following rules shall be observed.

1. No appeal shall be granted from the judgment or decree of any court of the United States to any other court of the United States, unless such judgment or decree be final, as aforesaid, and amount to the value herein after expressed for a writ of error.

2. Every appeal shall be prayed at the time of rendering the judgment, sentence, or decree: but in cases of admiralty or equity, the circuit or supreme court, or any judge thereof, may upon cause shewn, direct such appeal in six months thereafter.

3. The person appealing shall, by himself, or a responsible person in his behalf, in the office of the clerk of the court, from whose judgment, sentence, or decree, the appeal is prayed, give bond and sufficient security, to be approved by the court, and within a time to be fixed by the court, to the appellee for the due prosecution of his appeal.

4. The penalty of the said bond shall be in a reasonable sum, in the discretion of the court.

5. It ſhall be the duty of the appellant to lodge an authenticated copy of the record, before the expiration of the ſecond term, after the appeal ſhall be entered, in the clerk's office of the ſuperior court; or elſe it ſhall ſtand diſmiſſed, unleſs further time ſhall be granted by the court, before the end of ſuch ſecond term, for lodging the ſame.

6. The plaintiff in error ſhall aſſign errors upon matter of law only ariſing on the face of the proceedings. But nothing herein contained ſhall be conſtrued to affect a writ of error brought upon the grounds of a writ of error coram vobis. [*Note* 24.]

7. If the judgment or decree be affirmed in the whole, the appellant ſhall pay to the appellee ten per centum on the ſum due thereby, beſides the coſts on the original ſuit and appeal.

8. If the judgment or decree be reverſed in the whole, the appellee ſhall pay to the appellant ſuch coſts as the court in their diſcretion ſhall award.

9. Where the judgment or decree ſhall be reverſed in part, and affirmed in part, the coſts of the original ſuit and appeal ſhall be apportioned between the appellant and appellee, in the diſcretion of the court.

10. The circuit and ſupreme courts ſhall in caſe of a partial reverſal, give ſuch judgment or decree as the diſtrict or circuit courts, as the caſe may be, ought to have given.

11. On appeals of writs or error, it ſhall be lawful for the ſupreme court, or the circuit courts reſpectively, to iſſue execution, or remit the cauſe to the circuit or diſtrict courts, as the caſe may be, in order that execution may be there iſſued, or that other proceedings may be had thereupon.

12. Writs of error ſhall be iſſued *ex debito juſtitiæ* except in capital offences, provided that the judgment, excluſive of coſts, ſhall amount to dollars, in a diſtrict court, or dollars, in a circuit court, or relate to a franchiſe or freehold of the value of dollars, in a diſtrict court, or dollars, in a circuit court: and no writ of error ſhall iſſue in a capital offence; nor ſhall a writ of error be a ſuperſedeas, unleſs ſome judge of the circuit or ſupreme courts, as the caſe may be, after inſpecting a copy of the record, and being of opinion that there is ſufficient error therein for reverſing the judgment in whole or in part, ſhall certify the ſame; in which caſe, the clerk iſſuing the ſaid writ, ſhall endorſe on the ſaid writ of error, that it ſhall be a ſuperſedeas, and it ſhall be obeyed as ſuch accordingly.

13. And it ſhall be alſo neceſſary, before a writ of error ſhall operate as a ſuperſedeas, that bond with ſecurity to be approved by the clerk of the court iſſuing the ſaid writ, ſhall be given in the ſame manner, under a like penalty, and the plaintiff in error ſhall lodge an authenticated copy of the record, under the ſame regulations, and the parties in error ſhall be ſubject to the ſame judgment and mode of execution, as is already directed in the caſe of appeals.

14. A writ of error ſhall not be brought after the expiration of five years from the paſſing of the judgment complained of: but where a perſon thinking himſelf aggrieved by ſuch judgment, ſhall be an infant, feme covert, non compos mentis, or impriſoned, when the ſame was paſſed, the time of ſuch diſability ſhall be excluded from the computation of the ſaid five years.

15. Whenſoever the court before which an appeal or writ of error is heard, ſhall be divided in opinion on ſuch hearing, the judgment, ſentence, or decree, ſhall be affirmed. [*Note* 25.]

And be it further enacted, That all the ſaid courts of the United States ſhall have power to grant new trials, according to the principles of law: to impoſe and adminiſter all neceſſary oaths or affirmations; to puniſh by fine or impriſonment, all contempts of authority in any cauſe or examination before the ſame; to eſtabliſh all neceſſary rules, (ſubject in the caſe of the diſtrict and circuit courts, to the ſupreme court as aforeſaid) in conformity with the Conſti- 43. Powers and rules of the courts.

tution and laws of the United States: And that the proceedings of every day, during a term, ſhall be drawn at full length by the clerks of the ſeveral courts, againſt the next ſitting thereof; and ſuch corrections as may be neceſſary, being firſt made therein, they ſhall be ſigned by the preſiding juſtice, or in the caſe of a diſtrict court, by the diſtrict judge of the diſtrict: that when any cauſe ſhall be finally determined, the clerks of the ſeveral courts ſhall make a complete record thereof: and that all writs, precepts and ſummonſes, iſſuing from any court, ſhall be under the ſeal, and ſigned by the clerk of the ſame, and ſhall bear teſte in the name of the chief juſtice for the time being.

44. Of juries. And be it further enacted, That juries ſhall be ſworn and impannelled in all caſes preſcribed by the Conſtitution of the United States and the common law: that iſſues of fact ariſing in any cauſe in chancery, may, under the direction of the court, be tried at the bar of the courts of the United States, by a jury there impannelled: that in other caſes of equity, and in civil cauſes of admiralty and maritime juriſdiction, the court alone ſhall decide: that juries ſhall be ſummoned by writs of venire facias, to be directed to the marſhal or his deputy, or any other perſon to be appointed by the court, in caſe neither the ſaid marſhal nor his deputies be indifferent perſons, or they be intereſted in the event of the cauſe: that challenges ſhall be according to the courſe of the common law: that the qualifications of jurors ſhall be the ſame as thoſe of jurors allowed to be ſworn upon queſtions of freehold in the ſtate wherein the court ſits: that the diſtrict and circuit courts, ſhall at every term, direct the number of jurors to be ſummoned for the ſucceeding term; and the juries for each ſuit ſhall be determined by ballot: that when from any cauſe, juries ſhall not be previouſly ſummoned, or being previouſly ſummoned, ſhall fail to attend, by-ſtanders may be ſummoned to complete the pannel, and the court may impoſe ſuch fine on every delinquent who has been ſummoned, as the laws of the ſtate impoſe in ſuch caſes: Provided always, that in criminal caſes, juries of the vicinage ſhall be ſummoned, according to the courſe of the common law.

That twenty-four freeholders ſhall in like manner be ſummoned to each term of a diſtrict and circuit court, to compoſe a grand jury, on whom, or any of whom, failing to attend, the court may impoſe ſuch fine as the laws of the ſtate impoſe in ſuch caſes; and that if a ſufficient number of thoſe ſummoned do not meet, to compoſe a grand jury, at the time appointed, or if having met, any of them ſhould abſent himſelf without permiſſion, ſo as to leave the number too ſmall for a grand jury, the court may direct an adequate number of by-ſtanders to be ſummoned to ſupply the places of the abſent.

That all jurors, grand or petit, attending any court of the United States, ſhall be allowed for every day's attendance thereon, and for every twenty miles of travelling, and their ferriages: that the allowances to the grand jurors ſhall be paid by the treaſury of the United States: that in the bills of coſt in every jury-cauſe, ſhall be taxed and accounted for to the ſaid treaſury; and the allowances to the petit jurors ſhall alſo be paid by the ſaid treaſury. And jurors coming to, attending on, or returning from any court of the United States, ſhall be privileged from arreſts in civil caſes, one day being allowed for every twenty miles from their places of abode; and all arreſts contrary hereto, ſhall be void.

45. Teſtimony. And be it further enacted, That in all the courts of the United States, the rules of evidence, ſo far as they relate to competency and credibility, ſhall be the ſame as at common law: that for good cauſe, the courts of the United States, or any judge, may grant commiſſions for the examination of witneſſes: and that the clerks of the ſeveral courts, when any witneſs ſhall be about to depart from the diſtrict in which a ſuit is to be tried, or ſhall by age, ſickneſs, or otherwiſe, be unable to attend the court; or where the claim or defence of

any party, or a material point thereof, ſhall depend on a ſingle witneſs, may upon affidavit thereof, iſſue a commiſſion for taking the depoſition of ſuch witneſs de bene eſſe, to be read as evidence at the trial, in caſe the witneſs ſhall then be unable to attend; but the party obtaining ſuch commiſſion, ſhall give reaſonable notice to the other party, of the time and place of taking the depoſition. And all witneſſes duly ſummoned to any court of the United States, ſhall be privileged from arreſts in civil caſes, while coming to, attending on, or returning from the ſame; one day being allowed for every twenty miles from their places of abode: and all arreſts contrary hereto, ſhall be void.

That ſummonſes ſhall be iſſued by the reſpective courts for witneſſes in any ſuits depending in the courts of the United States: that if any perſon, ſummoned as a witneſs, and attending the court, or attending the commiſſioners appointed to take his depoſition, ſhall refuſe to give evidence upon oath or affirmation, as the caſe may be, he ſhall be committed to priſon, either by the court or the commiſſioners, there to remain until he ſhall give evidence: that any perſon ſummoned as a witneſs, and failing to attend accordingly, ſhall be liable to the action of the party injured by ſuch failure: and that in a bill of coſts, the charge of more than three witneſſes, for the proof of any particular fact, ſhall not be allowed.

And be it further enacted, That whereſoever any perſon ſhall be duly charged before any judge or juſtice of the United States, or juſtice of peace of a ſtate, upon oath or affirmation, with any crime or offence againſt the United States, the puniſhment whereof is fine, impriſonment, or corporal ſuffering, not extending to death, it ſhall be lawful for the ſaid judge, juſtice, or juſtice of the peace, to iſſue his warrant, and demand bail of ſuch perſon for his appearance at the next court, whether a diſtrict or circuit court, to be held at the diſtrict for the United States, having juriſdiction in the caſe, or elſe he ſhall be committed; that upon the giving of ſuch bail, the recognizance ſhall be forthwith tranſmitted to the clerk of the ſaid court: that the witneſſes ſhall be bound by recognizance to appear and teſtify againſt the ſaid offender, which ſhall be forthwith tranſmitted in like manner: that if for the want or refuſal of bail, the ſaid offender ſhall be committed to cloſe cuſtody, and it ſhall appear that the offence is to be tried in another diſtrict, it ſhall be the duty of the judge of ſuch diſtrict in which he is confined, to iſſue a warrant to the marſhal thereof, commanding him to remove the offender, at the expence of the United States, to the diſtrict where the trial is to be had; and that bail may be given in the caſes aforeſaid, even after commitment. That whereſoever any perſon ſhall be ſo charged as aforeſaid with any crime or offence againſt the United States, the puniſhment whereof is death, it ſhall be lawful for the ſaid judge, juſtice, or juſtice of the peace, to iſſue his warrant for arreſting him: that the ſaid offender may at any time before trial, be admitted to bail by ſome juſtice of the ſupreme court or judge of the diſtrict court of the United States, and by no other; but the judge or juſtice ſhall not admit to bail, without having due regard to the nature and circumſtances of the crime or offence, and of the evidence and the uſages of law: that the witneſſes ſhall be bound by recognizance as aforeſaid, which recognizance, as well as that of bail, ſhall be tranſmitted as aforeſaid. That in all criminal caſes, not otherwiſe provided for by ſome ſtatute of the United States, the proceſs and modes of proceedings ſhall be the ſame in the diſtrict and circuit courts reſpectively, with thoſe obſerved in criminal caſes in the ſtate included within the diſtrict or circuit; but that no information ſhall be filed, without the expreſs approbation of the court, on good cauſe ſhewn: And that every court rendering judgment in any criminal caſe, may award execution thereupon. 46. Criminals.

And be it further enacted, That until it ſhall be otherwiſe provided by law, the ſeveral courts of the United States ſhall be the judges of coſts; and it ſhall be 47. Coſts.

discretionary in the courts to divide costs between the parties, or for good cause, to compel either party to pay the same, without respect to the event of the suit in which the said costs shall have arisen, except where it is herein before otherwise directed.

48. Rules of decision. And whereas the Constitution of the United States, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, are the supreme law of the land:

Be it further enacted, That the laws of the several states, so far as the claim of a plaintiff, or the defence of a defendant may depend thereon, in respect to its merits, evidence or limitation of time, shall, subject to the supreme law aforesaid, be rules of decision: that in all pleadings, except in limitations of time, and in all trials, except in matters of evidence, and in the regulations of the executions aforesaïd, such statutes, as were made before the fourth day of July, in the year one thousand seven hundred and seventy-six, for the amendment of the law in those cases generally, shall also be rules of decision: and moreover, that the common law, so far as the same be not altered by the supreme law, by the laws of particular states, or by statutes, shall also be a rule of decision. [*Note* 26.]

49. Attornies and attorney-general. And be it further enacted, That in all the courts of the United States, the parties may plead and manage their own causes personally, or by the assistance of such counsel or attornies at law, as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district, a meet person learned in the law, to act as attorney for the United States, in such district; who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office, whose duty it shall be to prosecute and conduct all suits in the supreme court in which the United States shall be concerned, and to give his advice and opinion upon questions of law, when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.

50. Repealing clause. And be it further enacted, That all acts or parts of acts of the United States, coming within the purview of this act, shall, be, and the same are hereby repealed; saving and confirming, however, all things under the said acts or parts of acts already done, or which may be done before the commencement of this act.

51. Commencement. And be it further enacted, That this act shall commence and be in force on the day of

THIRD PART.

NOTES.

(1.) HAD *it been practicable, the laws respecting the judiciary of the United States, would have been declared to operate in states hereafter admitted into the Union, without the formality of a special act. But it was not attempted; because it cannot be now foreseen at what time or place the district court of the new state ought to meet; to what circuit it shall be attached; at what time or place the circuit court shall be held within it; nor what salary will be commensurate with the labours of the judge.*

(2.) *The stated sessions are reduced from four to two, partly to accommodate the district judges, under the proposed augmentation of their trouble. It is probable that two of these sessions will exhaust the civil business for a long time, if not forever; especially when we combine the kindred jurisdiction of the circuit courts. With regard to offences cognizable in the district courts, most of them will be prosecuted without an arrest before judgment (except on non-appearance after summons) or will be bailable with cases. Hence would any possible procrastination be light in the scale.*

To those who are acquainted with judicial proceedings, it is almost needless to observe, that it contributes to regularity, the convenience of suitors, and perhaps fairness, to limit the continuance of sessions.

(3.) *It may seem superfluous even to hint to courts, that public court-houses, where attainable, ought to be their forum. That every confidence may be safely reposed in the judges, is a fact undeniable at the present day. But in a judiciary system, which looks beyond the existence of those whose integrity is now justly revered, the eye of the world ought to be one of the centinels of justice.*

Emergencies which may compel the removal of courts from fixed places of session, are familiar to our memory. A writ of adjournment is the instrument of removal in the country from which we borrow most of our jurisprudence. Here the power of adjourning is divided between the president and the courts; the president may order it in vacation, when the courts cannot assemble for the purpose; and the courts themselves may adjourn, when the exigency breaks forth during their session.

(4.) *Some exclusions of the state courts are delineated in the original law. It is an honorable evidence of candor explicitly to announce the rights of the federal judiciary. Dissensions, if not crushed in the beginning, will be more quickly terminated by such a measure. For by ascertaining the ultimatum of those exclusions, and of the federal jurisdiction, every contest of this kind may be brought to an immediate test.*

(5.) *According to the law of nations, the diplomatic representatives of sovereigns cannot be sued in the courts of a foreign potentate; but consuls, except when they are sheltered from their jurisdiction by actual convention, possess no such immunity.*

(6.) *How, it may be asked, can any debt, having a federal quality, but below a particular sum, be banished from the federal jurisdiction?—The following reply is offered:*

1. *The Constitution has undertaken to describe only the kind of persons and things which should have access to the federal courts, not to estimate the value in debate.*

2. *The supreme court, though inherent in the Constitution, was to receive its first motion from Congress; the inferior courts must have slept forever, without the pleasure of Congress. Can the sphere of authority over value be more enlarged?*

3. *Without this construction, courts must be ordained for the recovery of every trifling sum, which the unavoidable expences attending it, might exceed ten fold. This therefore, never could have been intended by the Federal Convention.*

Farther; without a clause against absent debtors, great injustice may be done to resident citizens. Under the name of absent debtors are included, as well those who have never been inhabitants of the United States, as those who, having been inhabitants, expatriate themselves or abandon a state. An equal partition of the debtor's property among his creditors, being more equitable, than that any one should seize the whole, a common attachment is not recommended. But Congress will perceive that this subject must remain mutilated, until they establish, if not uniform laws of bankruptcy throughout the United States, at least an act of insolvency.

(7.) *It is the direct sense of the Constitution, that there should be a chancery. A proper plan then must be devised for it. That upon which most of the states have practised for years, and whose theory wants no explanation, challenges our acceptance. If it were ever liable to the imputation of having usurped on the common law, its effects are now very salutary, and itself a friendly auxiliary to the common law. Upon these ideas, the federal jurisdiction in equity is moulded. Indeed, unless the lenient properties of equity were to be lodged by law some where, the courts of common law would be continually inventing subtleties or fictions by which to engross them.*

(8.) *This clause will debar the district court from interfering with the judgments at law in the state courts. For if the plaintiff and defendant rely upon the state courts, as far as the judgment, they ought to continue there as they have begun. It is enough to split the same suit into one at law, and another in equity, without adding a further separation, by throwing the common law side of the question into the state courts, and the equity side into the federal courts.*

(9.) *This reſtriction aſſumes for its foundation, that caſes ariſing under the Conſtitution, laws and treaties of the United States, between any perſons or bodies whatſoever, not ſpecially protected by the law of nations, are not without the reach of the judiciary power of the United States. For the ſubſequent deſcriptions of perſons, and bodies, ſpread, inſtead of contracting the juriſdiction. But the dignity of the United States, and of a particular ſtate, ought to exempt them from the cognizance of a ſingle judge. But, can the United States, or a particular ſtate, be defendant? To be a party, as is the phraſe of the Conſtitution, is to be a plaintiff or defendant. Do the rights of ſovereignty forbid the latter? They do not, where the ſovereign becomes defendant with his own conſent. The Conſtitution is ſuch an act of conſent, done by the United States and the individual ſtates; unleſs it be interpreted, that the individual ſtates may be a party now, only as they were before, to wit, as ſovereigns, and that the United States ſhould be on the ſame footing. To this may be oppoſed the facility with which the Conſtitution might have ſuppreſſed any ambiguity, by uſing the word "plaintiff," inſtead of "party:" the propriety of informing public bodies, that though they are political agents, they are not abſolved from moral obligation; and the licence which is ſometimes given by a ſovereign, to ſcrutinize his pretentions before his own courts. But the ſtumbling block is, that neither the United States nor the individual ſtates, can be compelled to be juſt, if inclined to be obſtinate in injuſtice. Let it rather be believed, that a judgment paſſed againſt them by a conſtitutional tribunal, would be unreluctantly obeyed. If, in defiance of its duty, as a member of the Union, a ſtate ſhould refuſe compliance, the general government will doubtleſs add its earneſt remonſtrances. What remedy lies beyond theſe bounds, is a ſerious intricacy. But without an effectual one, the Conſtitution would be unnerved, where it ought to be ſtrong.*

If in legal analogy an execution were to be ſought, a diſtringas correſponds more aptly than any other. If as a diſtringas would operate upon public property, in which every individual has an intereſt, it were better immediately to apply to individuals pro rata, the collection may be made in the uſual form. It is the province of policy, however, to diſcern the delicate path; and as ſuch, it is left without other remarks to the Houſe.

(10.) *This clauſe ſuppoſes that the diſtrict courts will hold their ſtated ſeſſions at the ſame place with the circuit courts: That a criminal may be tried by the firſt diſtrict court which ſits, if he deſires it, unleſs a bill ſhall have been found, or an arraignment made, or ſome ſimilar ſtep taken in the circuit court. The diſcretion with which the attorney of the diſtrict is indulged, is not more than is due to his office. He will naturally aim at the higheſt ſatisfaction for the violated laws of the United States, which the teſtimony will, in his opinion permit, and will therefore indict, when neceſſary in the circuit court. And the caſes themſelves, thus undefined, will not often, if ever, be of a very atrocious caſt.*

(11.) *The following are examples of the caſes in No. 7, 8, and 9.*

An action of aſſault and battery ſhall not be brought againſt an inhabitant of Pennſylvania, in any diſtrict court but that of Pennſylvania, unleſs, &c.

An action on a bond given by an inhabitant of Pennſylvania to another perſon, ſhall not be brought in the diſtrict court of Pennſylvania, although it may have been aſſigned to another inhabitant of Pennſylvania, except, &c.

A defendant ſhall not be arreſted or ſummoned in Pennſylvania, in a ſuit to be tried in the diſtrict court of New-Jerſey, except in the next example.

An inhabitant of Pennſylvania connected in intereſt with an inhabitant of New-Jerſey, may with reſpect to that intereſt, be ſued in Jerſey.

(12.) *A ſpecial ſeſſion muſt generally be held for admiralty caſes and ſeizures, becauſe they ſpring up very irregularly, and will not ſuffer delay; they are alſo of conſiderable length, and would diſturb the whole circle of buſineſs, unleſs interdicted to be tried then.*

(13.) *With this power every juſtice of the peace is clothed, as a guardian of the public quiet.*

(14.) *The miſbehaviour of the deputies may be ſo groſs, as to ſtifle every tenderneſs for the character of the officer; and therefore the judge is armed with authority to ſtop his improper career.*

(15.) *The perſonal liberty of a citizen is a ſubject of precious moment; and as in government unjuſtly to abridge it, would be denominated tyranny, ſo not to wreſt from individuals an opportunity of cramping it, where a veto can be impoſed by law, would be almoſt a traiterous neglect. With this view, bail has been thus regulated. If every plaintiff may exact bail, it will be exacted in all caſes. If no plaintiff may, or if a judge is firſt to be petitioned, juſtice will be eluded in many. There is then no choice, but to veſt the clerk with diſcretionary powers on this head (which would be unuſual, and perhaps unſafe) or to preſcribe ſome rules like the foregoing.*

(16.) *Theſe four forms of execution are intimately known to every lawyer in the United States, being among the elements of his ſcience, and having their eſſence ſettled by adjudications. Perhaps at a day not far remote, it may be thought an acceſſion to freedom and to commerce, to emancipate the perſon of a debtor from the graſp of his creditor, and to ſubſtitute lands under due caution, againſt frauds and oppreſſions, for the payment of debts accruing after a certain time. The reſpite of execution is to afford an opportunity to obtain a writ of error, or indeed an appeal.*

(17.) *The requiſition that the decree or judgment ſhall be final, will aboliſh a variety of appeals or writs of error on the ſame ſubject. For if every interlocutory matter would bear an appeal or writ of error, a ſuit would not be finiſhed in an age. Beſides, a miſtake in one part of a cauſe is frequently rectified in another. Nay, the party whom the miſtake has prejudiced, may ſtill be victorious at laſt. Nor will the diſcontented party be diſabled from reaping the ſame advantages after final judgment, as before.*

Let it be here remarked, that appeals and writs of error have ſome different conſequences: Appeals arreſting the judgment immediately, and writs of error after ſome delays and formalities. Appeals are

allowed only in admiralty and revenue and equity cauſes. In them, the merits are exhibited intire to to the reviſionary tribunal. But, the real merits have moſt frequently been decided againſt the plaintiff in error. He flies to the higher court with the facts of the caſe found againſt him, and without a chance of having them re-examined, unleſs on the face of the proceedings a capital blunder appears. The appellant and plaintiff in error, therefore, ſtand not on the ſame line of favor.

The mode of giving teſtimony in equity, is by depoſitions: It is alſo practiſed in the admiralty, to examine witneſſes viva voce, and commit their evidence to writing. In our intercourſe with foreign nations, an expoſition of the conduct of our admiralty, may be frequently decent and uſeful. Perhaps therefore, the original law is exceptionable in allowing the judge, whoſe opinion is to be canvaſſed, the privilege of placing the cauſe in any attitude which ſquares beſt with that opinion.

(18.) This power is granted in behalf of perſons confined on ſuſpicion of crimes. The circuit courts may of their own motion, have a gaol delivery earlier than the returns of the ſtated ſeſſions, or the ſupreme court may command it, ſhould they be urged by any imminent circumſtance.

(19.) On the ſuppoſition, that the increaſed compenſation to the diſtrict judges would be a per diem allowance according to their attendance, the ſum would not be an obſtacle of conſequence; and the admiralty buſineſs originating while they are from home, may be ſo adjuſted by their own regulations, as not to ſuffer by their abſence.

(20.) The United States are permitted to be ſued in a circuit court, while particular ſtates are ſuable only in the ſupreme court. This difference is made, becauſe the Conſtitution demonſtrates a peculiar care of ſuits againſt a ſtate, by giving original juriſdiction in them to the ſupreme court. Conſuls and vice-conſuls, being coupled with ſtates, in this particular ought alſo to be confined to the ſupreme court, were it not for the inconvenience of ſuch inſtitution.

(21.) Clerks and marſhals are indiſpenſable and confidential officers. They ought to have talents, and emoluments equal to a livelihood. Their poſts now produce mere trifles. But being bound to be always in the way, and at call, they are precluded from any gainful employment at a diſtance abroad. The allowances which the circuit courts would make to them, would be abundantly replaced by the public ſhare of fines and forfeitures. But this fund was not deſignated, becauſe it reſts the renumeration of public ſervants upon the delinquencies of its citizens. Additional duties may from time to time be thrown upon them, which will balance this ſtipend.

(22.) The juriſdiction of the ſupreme court is expreſſed nearly in the words of the Conſtitution. It was wiſhed, that where the United States were ſued, the cauſe could be confined to the ſupreme court, as is the caſe with a particular ſtate. But it is doubtful whether this, being one of the inſtances in which the ſupreme court is declared to have appellate juriſdiction, it can have original juriſdiction alſo under the words of the Conſtitution.

The formation of writs is a branch of judicial duty. Rules of practice belong to the authority of every court, and their other incidental powers add to that authority. The tranſition from theſe to the ſuperintending of the whole courſe of proceedings, will not therefore be conſidered as too great. But it is adviſable, that every ſyſtem of practice throughout the ſtates ſhould be conſulted, in order that the general proceeding ſhould be accommodated to the habits of the different ſtates, as nearly as may be. The judges of the ſupreme court have already had ſome experience on this head, and can therefore better execute the work, than any other perſons. It would not be difficult for an individual to offer a ſcheme apparently good. But he would probably feel too great a bias to the practice to which he had been accuſtomed; and the Houſe would alſo be under ſome perplexity how to reconcile the uſages of the ſtates.

(23.) Bail is not needful, except in caſes of original jurisdiction. Of theſe, the number in the ſupreme court is ſmall, and they will ſcarcely ever be of ſuch vehemence, as that the poſtponement of a queſtion of bail, until the court can be moved, ſhould be injurious.

(24.) The plaintiff in error, is limited to errors in law. This is agreeable to the practice which has ſo much influence on our judicial proceedings. For after a jury has pronounced the facts in iſſue, and a new trial has either not been ſolicited, or has been rejected, on the principles of the common law, no court or jury ought to agitate the ſame facts, unleſs the judgment ſhould be reverſed by a ſuperior court. On the other hand, in equity and admiralty caſes, every fact as has been already obſerved, is before the ſuperior court in the ſame manner, as it was before the inferior, and may therefore be ſubmitted with propriety to the ſuperior court.

New facts, and new proofs on appeals, are here diſcarded, on account of the numberleſs frauds which may be covered under the admiſſion of them.

(25.) Upon an equal diviſion of an appellate court, it is preſumable, that the inferior court was right. Without this rule, an appeal or writ of error may be hung up in the ſupreme court for many years.

(26.) The Conſtitution, laws and treaties of the United States, are the ſupreme law; that is, they will controul on federal ſubjects, every other law.

They will particularly controul the laws of the ſeveral ſtates; whether conſiſting of their own original legiſlation, the common law, or the ſtatute law, expreſsly or tacitly adopted.

Such is the extent of mere power. But it may be affirmed, that it will not be exerciſed, becauſe it ought not, where the the claim of a plaintiff, or the defence of a defendant, reſts upon a valid law of a ſtate.

This may happen—1. In perſonal rights; 2. Rights of property; 3. Torts; and 4. Sometimes even in offences, upon the merits, the evidence, or a limitation of time.

But beſides theſe, are three other points, not tinctured by the particular caſes, but governed only by the claſs of actions, to which the individual caſe belongs: pleadings, with the exception of limitation: trial, with the exception of evidence; and executions.

The common law is confeſſedly incompetent on theſe topics. The alternative then is, between the ſtate laws, and the ſtatutes.

The latter have the advantage in uniformity, which the judiciary of the United States ought to cultivate; and without it, a citizen who is a debtor in one ſtate, may, although a creditor to an equal amount in another, poſſibly be ruined.

But ſome caſes will not be influenced by ſtate laws; to wit, thoſe of a foreign and tranſitory nature, as a bond executed in Europe. The ſupreme law may alſo be ſilent. The lex loci will then be admitted in its cuſtomary degree; and where it ends, the common law and ſtatutes aforeſaid will enter into the queſtion.

But the Attorney-General conſiders theſe expedients as merely temporary; becauſe he truſts, that the neceſſity of a federal code is too ſtriking to eſcape the attention of the Houſe. That it muſt be a work of time and difficulty, is an exhortation immediately to commence it.

Upon ſo grand an undertaking, the practice of nations has been variant; ſome having directed the materials of a code to be reported in the firſt inſtance, and others a complete digeſt. As too much leiſure and reflection cannot be beſtowed on ſuch a compoſition, the former mode is preferable; eſpecially ſince the freedom of correcting the matter, may be fettered by the ſolemnity of a law, when connected with a great whole.

But arduous as this effort muſt be, it is not boundleſs. It would probably be pointed to the following leading objects: 1. The proviſions which already exiſt by the Conſtitution and the federal laws: 2. Such laws as may ſtill be neceſſary for the further execution of the Conſtitution, and the completion of federal policy: 3. The common law, and ſtatutes: And 4. The laws of the ſeveral ſtates, as involved in queſtions ariſing therein.

Theſe preliminaries having obtained the ſanction of Congreſs, the reducing of them into laws will become more eaſy and accurate.

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